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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897

WILLIAM E. ADAMS, PLAINTIFF IN ERROR,

vs.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

(16,000)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 569

WILLIE B. MOORE, PETITIONER,

vs.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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IN THE SUPREME COURT OF MICHIGAN

Appeal from the Circuit Court for the County of Kalamazoo

The Honorable Lucien F. Sweet and George V. Weimer, Circuit Judges

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Cal. No. .....

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff and Appellee,

vs.

WILLIE B. MOORE, *Respondent and Appellant.*

RECORD ON APPEAL

Appearances:

William H. Culver, *Attorney for Respondent-Appellant.* Business Address: 710 Kalamazoo Bldg., Kalamazoo, Michigan.

John M. Pikkaart, *Prosecuting Attorney, Kalamazoo County, Michigan, Attorney for Plaintiff and Appellee.* Business Address: County Building, Kalamazoo, Michigan.

1 IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Calendar Entries

(Case No. 46250)

Date	Proceedings
1938	
Oct. 29,	Filed returns from Municipal Court.
Oct. 29,	Filed information.
Oct. 29,	Arraigned. Information read by Prosecuting Attorney. Respondent pleaded guilty. Hearing on degree of murder. Examination of witnesses concluded. Enter order finding Respondent guilty of First Degree Murder upon this examination and upon Respondent's plea. Respondent sentenced to Southern Michigan Prison at Jackson to serve the rest of his natural life.
Oct. 29,	Filed Judge's statement.
Dec. 5,	Filed removal warrant.
1949	
Sept. 9,	Filed notice of hearing—proof of service, etc.
Sept. 9,	Filed petition for leave to file a delayed motion to set aside plea of guilty; vacate judgment and sentence, etc.
Oct. 28,	Filed Petition for issuance of subpoenas.
1950	
Jan. 24,	Filed notice of hearing and proof of service.
Jan. 24,	Filed petition for leave to file a delayed motion, etc.
Jan. 24,	Filed notice of hearing and praecipe for motion.
2 1954	
Jan. 24,	Filed delayed joint motion to set aside plea of guilty; vacate judgment and sentence and discharge Defendant.
Jan. 24,	Filed petition for issuance of subpoenas.
Apr. 13,	Enter order granting motion to file a delayed motion for new trial.
Apr. 13,	Issued subpoenas.
Apr. 13,	Issued writ of habeas corpus.

Date

May 15, Filed subpoenas (served).
May 16, Filed subpoenas (served).
May 16, Hearing on motion for new trial. Proofs in part. Adjourned to June 2, 1950 at 1:30 p. m.
May 26, Filed delayed motion for new trial.
Sept. 11, Filed notice of hearing.
Sept. 11, Filed motion for re-opening of hearing on Defendant's motion for new trial. Affidavit.
Sept. 11, Filed order granting motion for re-opening hearing on defendant's delayed motion for new trial.
Nov. 20, Further hearing on defendant's motion for new trial. Proofs taken. Motion by Defendant to add new grounds to motion for new trial. Motion granted. Hearing adjourned to December 4, 1950 at 1:30 p. m.
Nov. 30, Filed petition for writ of Habeas Corpus.
Nov. 30, Issued writ.
Dec. 4, Further hearing on defendant's motion for new trial. Proofs taken. Briefs to be submitted.

3 1951

May 31, Enter order denying Respondent's delayed motion for new trial.
May 31, Filed opinion.
June 7, Filed motion of Respondent for testimony to be furnished without cost.
June 14, Filed application for leave to appeal.
July 25, Enter order denying motion for hearing testimony to be furnished to Respondent without cost.
Dec. 17, Enter order appointing William H. Culver as attorney for Respondent.

Date

1952

Jan. 28, Enter order granting motion of Respondent for transcript of proceedings at county expense.
Mar. 12, Filed receipt for transcript.
Sept. 27, Filed application for leave to file delayed appeal.
Sept. 27, Filed statement of facts.
July 7, Filed counter-statement of facts.
Aug. 13, Filed certificate of judge.
July 12, Filed claim of appeal, filed notice of appeal.

July 12, Filed proof of service.
July 14, Filed notice of hearing.
July 14, Filed motion to extend time.
July 14, Filed stipulation and order extending time.
Aug. 25, Filed motion to extend time.
Aug. 25, Filed stipulation and order extending time.
Oct. 25, Filed notice of hearing and proof of service.
Oct. 25, Filed bill of exceptions.
4 Nov. 1, Hearing on motion to extend time adjourned to November 4th.
Nov. 4, Hearing on motion of Respondent to extend time to settle bill of exceptions to November 15th. Order granted.
Nov. 4, Filed order extending time.
Nov. 15, Filed certificate of the court.

Bill of Exceptions—Filed October 25, 1954

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Information—Filed Oct. 29, 1938

KALAMAZOO COUNTY) ss.

Paul M. Tedrow, Prosecuting Attorney in and for the County of Kalamazoo aforesaid, for and in behalf of the People of the State of Michigan, comes into said Court, in the September term thereof, in the year 1938 and gives the Court here to understand and be informed that Willie B. Moore heretofore, to-wit: on or about the 26th day of October, 1938, at the City of Kalamazoo, in the County of Kalamazoo aforesaid, murdered Josie Zeedyk.

Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan.

Paul M. Tedrow,
Prosecuting Attorney in and for the
County of Kalamazoo, Michigan.

5 (Reverse side of Information):

INFORMATION FOR MURDER

NAMES OF WITNESSES
for the People
indorsed on this Information.

By Paul M. Tedrow,
Prosecuting Attorney at the time of filing the same.

Clarissa Zeedyk
Clarena Zeedyk
John Zeedyk
Harland Marr
Elmer Riley
Charles Burger
Theron Balch
Henry Baker
Catherine Crawford
Mrs. Charles May
Wakeline
Cora Jones
Florence Barnhart
Roy Walters
Ellen Smith
Margaret Koets
Dr. Ralph Cook
Dr. Paul Schrier
Dr. Bernard Simpson
Dan Burland
Dell Rowley
Dan Bordwell
Roy Carney
Hugh Stevens
Ray Cleveland
Loyal Aldrich
Walter Koons
Carlton Jackson
Dee Williams
Ralph Chapman
Dan Rowe
Ed Halladay
John Dyer
Tyrus Carter
Darrell Wicke
Bernard Niefert
Joe Milbeck
James Perry Drummond
Jack Loudermilk
Charles Struble
Oscar Wetherell
George White
Tex Jones
Mrs. William Moore

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6 IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Arraignment—Filed October 29, 1938

Before Hon. George V. Weimer, Circuit Judge, at Kalamazoo, Michigan, Saturday A. M., October 29, 1938.

Appearances:

Mr. Paul M. Tedrow, Prosecuting Attorney, for the People.

(Respondent arraigned and pleaded guilty).

THE COURT: The plea of guilty may be accepted, and if the Prosecutor is ready, we will now proceed to determine the degree of murder.

Statement of Evidence

CLARISSA ZEEDYKE, a witness, produced, sworn and examined on behalf of the people, testified as follows:

DIRECT EXAMINATION

By Mr. Tedrow:

Q. Your name is Clarissa Zeedyke?
A. Yes.
Q. You live here in the City of Kalamazoo?
A. Yes, sir.
Q. At what address?
A. 832 South Burdick.
Q. You were living there on Wednesday, October 26th?
A. Yes.
Q. With your mother?
A. Yes.
Q. And your mother's name was Josie Zeedyke?
A. Josie Zeedyke, yes.
7 Q. Now, on the afternoon of Wednesday, October 26th, did someone come to your house?
A. Yes.
Q. About what time was it?
A. It was shortly after 1, but I couldn't give the exact time.
Q. Who was that man that came to your house?
A. Bill Moore.
Q. This respondent?
A. Yes.
Q. Now, you go ahead and tell us just what occurred, just how he came to the door, and what happened.
A. As we were doing the dishes, why, we heard a rap and my mother went to the door, and there stood this boy.

He said he had come to clean the basement, and so my mother—

Q. Clean the basement for whom?

A. Mr. Zeedyke.

Q. That is John Zeedyke?

A. Yes, sir.

Q. That is your brother?

A. Yes, sir.

Q. And he lives the first house north of your house?

A. Yes, sir.

Q. All right; then what happened?

A. And so mother, of course, she—we always had the key to John's house, so she always, if anybody come to do any work, why, she always went over there to tell them what to do, and so she took the key and she went over there and unlocked the door and let him in.

Q. Let who in?

A. This man.

Q. This man here (indicating respondent)?

A. Yes, sir. And she must have went in the kitchen, because when she come back she said she had put the
8 rug up to the cellar door and put the papers over the kitchen floor so that he wouldn't bring up any dirt in. Then she come on home and we went on with our work.

Q. Then what next happened?

A. After a short time—I can't tell the exact time—why, he come back and he said that the cellar window was nailed, and my mother said, "well, that he would better go down and open it up if he thought it was too dusty," and she said that he better do as he thought to clean it best—do as he thought best to clean it, and he said "You better come because you always oversee things there," and she said "no." She smiled. She said "You do the best you can;" so, of course, he went back, and as he was coming over she laughed about it. She said, "Here he comes and I just got the rug put up to the door and here he comes and I will have to go back and fix it," but she didn't go back to fix it.

Q. Then what next happened?

A. After the work was done I went out in the yard to plant the tulip bulbs, and as I was planting the tulip bulbs, why, I saw him coming over, but I didn't see mother go back, and I didn't see him go back, because I

was busy, and he had been there working, and I didn't think there was any cause of me to watch if she went back or not.

Q. You saw him coming?

A. I saw him coming.

Q. From John Zeedyke's house over to your house?

A. Over to your house, and that was all I saw of him.

Q. Then what happened next?

A. After I had the tulips planted I went to cut the grass.

Q. Did you have occasion to go to John's house?

A. No, I didn't have no occasion to go there.

9 Q. Did you later on go there to John's house?

A. Well, after something told me to go find my mother, why, I went over there to see. I went in the house and called mother and I didn't get any answer, so then I went over to John's, and as I went into John's house and the door was locked in the kitchen, I knew that there was something wrong because the door never was locked if mother went there.

Q. Then what happened?

A. Then I thought I would go to the cellar window, and I wanted to be sure because I thought my mother had gone for a visit, and I didn't want to accuse anybody. Then I went and called to the cellar window on this side, and then the message come to me, "I am dying," and then I rushed out for aid.

Q. What occurred when you got to the cellar window?

A. Why, I pushed the window open, and just when I said "How are you coming with the cleaning?"—

Q. Called who?

A. I went to call the boy, because I felt in my heart there was something wrong, but I didn't want to go against anybody, and so I just called, I said "How are you coming with the cleaning? and then if that aroused my mother, then the word come back, "I am dying." My mother called, "I am dying" and then she groaned, and, of course, I knew she had to have aid.

Q. What did you do?

A. So I rushed out into the road and I hailed a truck there—first there was a man going by and I called, but he didn't hear.

Q. You hailed a truck out in the road?

A. Yes.

Q. Did two men come there?

A. Oh, there was a whole lot of them.

10 Q. Did they go in the basement?

A. Well, they didn't want to get off the truck at first. I suppose they thought there was something wrong with me because I screamed and hollered so.

THE COURT: The question is, Did they go into the basement?

A. Well, when they got to the basement window they didn't want to go in, but I pretty near pushed them in the basement. I said "My mother has to have aid," and then, of course, I don't know who—

Q. Did the[illegible]o in the basement?

A. They went in the basement window.

Q. Did you see your mother?

A. No. While they were going into the basement window I went next door to get the doctor and see what we could do for her.

Q. Had this respondent ever been at John's place before that?

A. Yes.

Q. He had done some work out there?

A. Yes, sir.

Q. For John Zeedyke?

A. Yes, sir.

Q. So that did he know that the key to John's house was kept at your home?

A. He must have or he wouldn't have come over.

Q. Your mother was how old?

A. Sixty-eight.

MR. TEDROW: I think that is all.

QUESTIONS BY THE COURT:

Q. You had seen this boy before?

A. Yes, sir.

Q. The same boy?

A. The same boy.

11 Q. The same one you see here in the Court Room?

A. Yes, the same boy.

Q. No question about it?

A. No question at all.

THE COURT: All right.

MR. TEDROW: That is all.

DONALD S. BURLAND, a witness, produced, sworn, and examined on behalf of the people, testified as follows:

DIRECT EXAMINATION

By Mr. Tedrow:

Q. Your name is Donald S. Burland?

A. Yes, sir.

Q. You are a member of the Kalamazoo Police Department?

A. Yes, sir.

Q. You had occasion to go to the home of John Zeedyke on the afternoon of Wednesday, October 26th?

A. I did.

Q. In response to a radio call?

A. Right.

Q. That you had received in your police cruiser?

A. Yes, sir.

Q. And what time did you get there?

A. 2:47.

Q. Just go ahead and briefly describe to the Court what you discovered at this house?

A. When we got there there was a lady out in front said something was wrong inside, so I ran into the
12 house and down in the basement and found a woman lying there on her stomach. She was disclothed.

Q. What clothing did she have on?

A. She had a pair of stockings.

Q. Is that all?

A. That is all that I noticed. And I stepped across her body and I seen that her abdomen had been cut open and her neck had been cut, and then I ran upstairs and called to Officer Dell Rowley telling him to call for the ambulance and the detectives, that there had been a murder committed there.

Q. Did the ambulance respond?

A. Yes, sir.

Q. And this woman was taken to the hospital?

A. Yes, sir.

Q. Now, was that an elderly woman?

A. Yes, sir.

Q. Was her clothing lying there?

A. Yes, sir.

Q. Now, was there a vast amount of blood around there?
A. It laid all in a pool there on the floor, yes, sir.
Q. You say that there was a cut across her abdomen; how long a cut was that?
A. Well, I couldn't tell just how long it was, but her insides was all laying open on the basement floor.
Q. Her intestines were lying out on the floor?
A. Yes, sir.
Q. How large a cut did she have around her neck?
A. I couldn't tell, there was so much blood around it.
Q. Was she alive?
A. Yes.
Q. Did she say something to you?
A. Yes, she said "Take me out of here."
MR. TEDROW: That is all.

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13 PAUL G. SCHRIER, a witness produced, sworn and examined on behalf of the people, testified as follows:

DIRECT EXAMINATION

By Mr. Tedrow:

Q. Your name is Paul Schrier?
A. Yes, sir.
Q. You are a Physician and Surgeon?
A. Yes, sir.
Q. Duly licensed to practice your profession in the State of Michigan?
A. Yes, sir.
Q. Did you have occasion to see Mrs. Josie Zeedyke at the hospital on Wednesday, October 26th?
A. I did.
Q. About what time did you see her?
A. About five minutes after 3.
Q. Will you describe to the Court briefly what her condition was and what injuries she had, if any?
A. May I refer to my notes?
Q. Yes.
A. She had a large bruise about an inch in diameter just above the left eye on the forehead. She had a large bruise about one and one-half inches in diameter on the forehead just above the right eye and to its outer side.

On the left side of the neck beginning just between the angle of the jaw and the collar bone, about two inches above the collar bone, there was a laceration three inches long, extending toward the back. This laceration was just through the skin. There was another cut extending from about this same point eight inches around to the other side of the neck, extending toward the back around to the other side of the neck. This laceration extended through all the tissues down to the vertebrae. Then
14 the tissues in between the second and third cervical vertebrae were severed, exposing the covering of the spinal cord. One small portion of bone on the third vertebrae was crushed. There was a laceration one and one-half inches long on the palmar surface of the right hand at the base of the fifth finger. This extended down to the muscle. There was a laceration three-four inches long on the palmar surface of the distal phalanx of the second digit of the right hand. Then there was a "V" shaped laceration about one-half inch to each leg of the incision, on the fourth digit of the right hand. There was a bruise one-half inch in diameter on the palmar surface of the second digit of the right hand. There was a laceration extending from just above the crest of the ilium, the hip bone, on the right side, and it runs about one and one-half inches below the umbilicus and extends transversely across the abdomen for a distance of eleven inches. The right four inches of this incision extended just through the skin and separated into two portions, two cuts. The left seven inches of this eleven inch incision extended entirely through all the layers of the abdomen. The entire greater omentum and transverse colon and a portion of the small intestine extruded from the perineal cavity and lay on top of the abdominal wall. The patient was in deep shock. The contents of the vagina were placed in slides, examined under the microscope and found to contain sperm—spermatozoa.

Q. What time did she die?

A. 3:40.

Q. What caused the death?

A. Hemorrhage from these wounds.

Q. Before she died did she say anything to you?

A. She did.

Q. Tell the Court what she said?

15 A. I arrived at the hospital at the same time the ambulance did and, on the way up in the elevator I asked her—I told her that it was I, and she said "I am glad," so I knew she recognized me. Then I asked her "Did the negro do this?" She said, "Yes, he did." I said, "Tell me what he did." She says, "First he knocked me down and then he cut me."

MR. TEDROW: That is all.

CHARLES W. STRUBLE, a witness, produced, sworn and examined on behalf of the people, testified as follows:

DIRECT EXAMINATION

By Mr. Tedrow:

Q. Your name is Charles W. Struble?

A. Yes, sir.

Q. You are the Sheriff of Kalamazoo County?

A. Yes, sir.

Q. Will you tell the Court briefly what this respondent told you about this case?

A. Willie Moore stated that in the neighborhood of 1:30 that he went to the Zeedyke home and asked Mrs. Zeedyke for the key to John's house for the purpose of cleaning the basement. He stated that he had been at the Zeedyke home before and had did work there. The key, he said, was given to him and he went over and unlocked the house and went down in the basement to do some sweeping, but he then returned a second time to the Zeedyke home and had some conversation with Mrs. Zeedyke about seeing his work, but returned alone to the

16 John Zeedyke home, and at that time he took a knife out of the table in the kitchen of the Zeedyke home and took it into the basement.

Q. That is of the John Zeedyke home?

A. John Zeedyke home. Then he returned again to Mrs. Zeedyke, John's mother, and requested her to come and see his work, and she then came over and came into the basement; had some conversation with her relative to the dust being made by the sweeping of the basement, and at that point he said he hit her on the head with the shaker

of the furnace and under a threat had intercourse with her; had required her to remove her clothes herself, which she did. Then she made an attempt to hit him with a stick and started towards the stairway from the basement and turned and said to him, "You will pay for this," and at that he said he got hold of her and took her back of the furnace and proceeded to kill her with this knife, and he cut her twice across the neck and stabbed her twice in the stomach.

Q. Did he say why he had proceeded to kill her?

A. He said that he knew that she knew him and that he was in trouble then if he didn't kill her, so he then took her back there for the purpose of killing her.

Q. Did he say how he left the place?

A. He said he left the place by going upstairs and out the front door of the house on the main floor.

MR. TEDROW: I think that is all, your Honor.

Statement by the Court

THE COURT: This respondent having entered a plea of guilty to the crime of murder, and the plea having been accepted, and an examination of witnesses having just been had to enable the Court to determine the degree of murder, as required by the statute, the Court finds and determines that respondent is guilty of murder in the first degree, and such finding and determination may
17 be entered in proper form upon our Court Journal.

You have pleaded guilty to the charge of murder, and the Court, after the examination of witnesses required by the statute, has found and determined that you are guilty of murder in the first degree; have you now anything to say before sentence?

THE RESPONDENT: No, sir.

THE COURT: Respondent says that he is seventeen; was born in Arkansas in 1921; has lived here with his father and mother about ten years, and is the oldest of three children.

He has been in trouble four or five times, consisting of breaking and entering and unlawful taking of automobiles, the first about three years ago. In 1937 he was committed to the Lansing School by our Probate Court. During these three years he became well acquainted with John Zeedyke,

our County Agent. He returned here from Lansing in June, 1938. In July he went to a C. C. C. Camp. On his return from the C. C. C. Camp in October he stole or took an automobile in Grand Rapids and was arrested for that. The County Agent, John Zeedyke, has provided odd jobs for respondent at the former's home from time to time.

Mr. Zeedyke lived next door to his widowed mother and sister. The key to his house was kept at his mother's. On Wednesday, October 26th, respondent went to Mrs. Zeedyke (the widow) and falsely stated to her that her son John has sent respondent there to do some work in the basement. Mrs. Zeedyke went with respondent to the basement of her son's house next door. On the way to the basement respondent picked up a butcher knife. In the basement he raped and murdered Mrs. Zeedyke. She was discovered by her daughter who summoned help.
18 Mrs. Zeedyke was rushed to the hospital and died within an hour or two.

Respondent went to his home, changed his clothes, took his trousers with blood spots to the cleaner, was arrested later the same day, and has just now pleaded guilty. In a private interview with him in my chambers he discussed the whole affair very freely with me in all its revolting details. The examination required by statute has been had; several witnesses examined. The Court has found and determined that respondent is guilty of murder in the first degree.

In my private interview with respondent I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired it. He assured me freely and voluntarily that he is guilty and that his one desire is to have it all over, to get to the institution to which he is to be committed, and to be under observation and to be examined.

I will not attempt to recite all the details of the story he told, but in substance he said that he was walking on Douglas Avenue that afternoon; that he had never had sexual intercourse before; that something strange came over him and that the impulse to rape Mrs. Zeedyke seized him, and that he went to the Zeedyke home for that purpose and none other. He insisted that he had no thought

of murder until the other crime was completed, and that Mrs. Zeedyke then said to him, "You will pay for this." He told me in detail how he and Mrs. Zeedyke went to the basement together; that he picked up the butcher knife on the way, placed it in his pocket; that he proceeded with the work and she returned to her home next door; that in a little while he went and called her and asked her to come to the basement to see the work he had done; that
19 she came the second time and left, and that finally he requested her to come the third time, and that when she then reached the basement he exhibited the knife he had in his pocket and commanded her to remove her clothing; that she did; that he then raped her and then when she was about to leave the basement she made the remark "You will pay for this"; that he realized that she recognized him, knew him as having been there before, and that then he struck her one severe blow on the head with the furnace shaker; that that "knocked her out;" she fell to the floor. He then cut her throat and then stabbed her in the abdomen and, to use his words, "her guts then came out" and he left. Such is his story to me in private, told very calmly; without any compulsion whatever. He insists that there is something wrong with his head; that he has had something akin to queer sensations before this.

This, without question, is the most pronounced case of sadism in the criminal annuls of this county.

The sentence of this Court is, that you, Willie Moore, shall be committed to the Prison of Southern Michigan at Jackson and there confined in solitary confinement at hard labor for and during your life.

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20 IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

The People of the State of Michigan

vs.

Willie B. Moore

Order Sentencing Respondent—Filed Oct. 29, 1938

The Court was opened for business in due form.

Willie B. Moore, the Respondent in this cause, having upon his plea of Guilty to the Information filed against

him in this Court, been duly convicted of the crime of MURDER, and the court before pronouncing sentence upon such plea, being satisfied after such investigation as was deemed necessary for that purpose, and by private examination of the respondent, respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of the nature of said accusation, and without any undue influence, and having been, on motion of the Prosecuting Attorney, brought to the bar of the court for sentence, and having there been asked by the court if he had anything to say why judgment should not be pronounced against him, and alleging no reason to the contrary;

And the court having proceeded by the examination of four witnesses to determine the degree of the crime, and it appearing to the Court from the testimony of
21 such witnesses that the respondent is GUILTY OF MURDER IN THE FIRST DEGREE, and the Court having so determined and announced.

THEREFORE, IT IS ORDERED AND ADJUDGED by the Court now here, that the said Willie B. Moore is Guilty of Murder in the First Degree and that he be confined in the State Prison of Southern Michigan at Jackson, Michigan at Hard Labor for and during the period of his natural life.

Read, approved and signed:

Geo. V. Weimer,
Circuit Judge.

Attest:
Eva M. Westnedge,
Clerk.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Motion for New Trial—Filed May 26, 1950

NOW COMES the above Respondent, by Roxborough & Roxborough, his attorneys, and moves the Court for an Order setting aside the conviction and vacating the sentence heretofore imposed in said cause and granting a new trial, for the following reasons (this written motion being hereby

rendered to confirm an oral motion made at a hearing of this motion on the 16th day of May, A. D., 1950, before this Honorable Court):

1. Because the verdict is contrary to the law, whereas said Respondent was deprived of rights essential to a fair trial.

2. Because at no time was assistance of counsel offered or mentioned to Respondent.

3. Because said Respondent was not informed of the consequences of his plea of guilty.

22 4. Because said Respondent was *hurried* through unfamiliar legal proceedings with not a word being said in his defense or cross examination of the state's witnesses.

5. Because said Respondent, being of the age of seventeen years at the time of said trial and possessed of only a seventh grade education, was not otherwise aware of his Constitutional rights.

This motion is based upon the records and files in said cause and upon the affidavit of JOHN W. ROXBOROUGH, II, Esq., attached.

Roxborough and Roxborough
By: (s) John W. Roxborough II,
Attorneys for Respondent.
1308 Broadway, Suite 403,
Detroit 26, Michigan.
Woodward- 34280.

Dated 22nd of May,
A.D., 1950.

COUNTY OF WAYNE SS.

JOHN W. ROXBOROUGH, II, being first duly sworn deposes and says that he is one of the attorneys for the Respondent in the above cause, and that he has read the transcript of testimony of the trial of this cause, upon which the foregoing motion is based, and knows the contents thereof, and the text of said motion is true of his own knowledge except as to the matters therein stated to

be upon information and belief and as to those matters he believes them to be true.

23 And further deponent says not.

John W. Roxborough II

Subscribed and sworn to before me the 22nd day of May, A. D., 1950.

Georgine Harding,
Notary Public, Wayne County, Mich.
My comm. expires April 20, 1954.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Transcript of Proceedings—May 16, 1950

BEFORE: Hon. Lucien F. Sweet, Circuit Judge

Kalamazoo, Michigan May 16, 1950.

APPEARANCES:

FOR THE PEOPLE:

Mr. William E. Sykes
Assistant Prosecuting Attorney

FOR THE RESPONDENT:

Mr. John W. Roxborough II
Attorney at Law
Tobin Building
1308 Broadway
Detroit, Michigan

Mr. C. R. Gemberling
Official Reporter

PROCEEDINGS

MR. SKYES: May it please the Court, it is the position of the Prosecution in this case that the motion

24 of the Defendant contains many general allegations but no actual specific allegations substantiating his claim that he has been deprived of any Constitutional rights.

MR. ROXBOROUGH: May it please the Court, I am Attorney Roxborough, of Detroit, representing the Re-

spondent in this motion for a new trial for Willie B. Moore. "So there won't be any misunderstandings, we aren't relying on any general allegations; we are relying just on two things, on this record and on the DeMeerleer case:"

I would like to call to the Court's attention that at that time Willie B. Moore was seventeen years of age; the extent of his education then was a seventh grade education. It is our contention that he did not have a fair trial and that contention is substantiated by the case of DeMeerleer vs. The People of the State of Michigan, 329 U. S., 663, decided February 3, 1947.

It is our contention that this case is directly in point and fits on all fours the case before the Bar at this time.

MR. SYKES: "If the Court please, I understand now that the Defendant has waived all claims to a new trial on the basis of the grounds that he has stated in his motion and that all other grounds with the exception of the claim that the DeMeerleer case as stated—the citation as stated by Defendant's Counsel, in his support for his motion and the record as offered by the Defendant, and more particularly, the portions of the record that refer to the lack of counsel and the lack of advice of the right to Counsel, and the advice as to the consequences of a plea of guilty, is this correct? Is that the impression of the Defendant or the claim of the Defendant?"

MR. ROXBOROUGH: "Yes, in addition to the other points in the DeMeerleer case, more particularly the quick justice as it has been called."

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25 IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Transcript of Proceedings—November 20, 1950

Before: Hon. Lucien F. Sweet, Circuit Judge. Kalamazoo, Michigan. November 20, 1950.

Appearances:

For the People: Mr. William E. Sykes, Assistant Prosecuting Attorney.

For the Respondent: Mr. John W. Roxborough II, Attorney at Law, Tobin Building, 1308 Broadway, Detroit, Michigan.

Mr. C. R. Gemberling, Reporter.

WALTER W. COE, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sykes:

Q. Would you relate what you told me as accurately as you can about what you knew about Willie B. Moore?

A. Yes, sir, you came into my office, I believe in the afternoon, introduced yourself as Mr. Sykes of the Prosecutor's office of Kalamazoo, and you told me that you wanted to know what I knew about the Willie B. Moore case, if anything. I told you that I remembered the case very well, it was a case I wouldn't forget, but I would have to go through my notes and give you the actual dates, when I arrested him here in Kalamazoo, when he went in to the Superior Court in Grand Rapids.

Q. You kept some notes, did you, of your daily activities?

A. Yes, sir.

26 Q. And was it by means of the notes that you refreshed your recollection as to the dates?

A. Yes, sir.

Q. But what did you tell me other than just the dates about your recollection of Willie B. Moore?

A. I told you that I came to Kalamazoo, he was picked up by the Kalamazoo Police Department by request, and I returned him from Kalamazoo to Grand Rapids with a stolen car; that I talked with him. He very freely admitted the offense and I told him I would like to talk with his father or any relative that he had in Kalamazoo. A couple of days later a gentleman who represented himself to be his father came into the office. I sent in the cell block and got Willie Moore and asked him to tell his father just what he had done, and he told his father that he had been up to Grand Rapids and taken this car and came to Kalamazoo and I asked the father did he wish to employ an attorney for his son and he said no, that he had already told him that he committed this offense and that there was no need to get an attorney for him.

Q. Was Willie there when you were talking to his father?

A. Willie was right there, yes, sir, and then there was

some damage done to the car to the extent of around $15 or $20, and I told the father about that, and the father paid that $15 or $20 damage. That is to the Standard Auto.

Q. At that time did you have jurisdiction over most of the colored cases that came in?

A. Yes, sir.

Q. You are a colored man yourself, is that right?

A. Yes, sir.

Q. So that you had a particular group of cases then that you worked on?

27 A. Yes, sir.

Q. Did you talk with Willie or his father or both on more than one occasion when his father came up there?

A. Yes, sir.

Q. When was some other occasions, if there were?

A. May I refer to my notes, your Honor?

THE COURT: Yes, you may refer to your notes to refresh your recollection. These notes are made by you at the time?

A. Yes, sir, this is the usual procedure of the Police Department, all your activities during a tour of duty of the day you have to send in a report.

THE COURT: You are now refreshing your present recollection by referring to notes which were made by you at the time of the transactions which you are about to speak of, is that it?

A. Yes, sir.

THE COURT: You may do so.

A. The first date was October 8. That is when I talked with Moore; then on the 10th of October I talked with his father, the gentlemen that represented himself as his father.

Q. What year was that?

A. That was in October 10, 1938, and there we had a lengthy conversation; went into the fact whether Willie had any previous convictions—and, of course, he was just a youngster then, I forget, either sixteen or seventeen at that time—and the father told me, and also Willie, in the presence, that he had spent some time in Industrial School, at Lansing, and I told him at that time, well, as a juvenile I don't think that would count against his record in a

court of record, and as I related, I informed them they could employ an attorney if they wanted to, and as the father said they didn't need any because the boy
28 had already told him he had committed this offense.

That was the 10th of October. On the 14th of October I went down to the County Jail and talked with Willie again. He was getting anxious, and wanted to know when he was going to be brought in court. Then I told him that time, why I couldn't tell him anything but I would contact the Prosecutor's office and would let him know. On the 17th day of October between 9:30 and 10 a.m. the subject, Willie Moore, was taken before Judge Thaddeus B. Taylor, of Superior Court, and there pleaded guilty to the charge of UADD.

Q. You were—did you take Willie Moore before the Court yourself?

A. Yes, sir, I was present, yes, sir.

Q. You say he pleaded guilty there?

A. Yes, sir.

Q. Do you recall whether there was any discussion at that time about his right to counsel or anything of that type?

A. The Judge, Thaddeus B. Taylor, asked the Respondent, was he pleading guilty of his own volition, had anybody promised him anything that caused him to plead guilty, had he been threatened in any way that caused him to plead guilty, and he said "No, I plead guilty because I am guilty." And he was remanded to jail for sentence.

Q. The record shows he was given a suspended sentence in court there, do you recall whether or not that was true or not?

A. I don't have—I wasn't there the date of sentence.

Q. How was it that you happened to remember anything in particular about Willie Moore more than any other man that you dealt with?

A. About ten days later after the subject received his sentence a Mr. Chapman, who was the Commis-
29 sioner of the Kalamazoo Police Department called me in reference to Willie Moore saying that it is too bad you didn't sentence that fellow and I asked him what did he mean, and he said well, he had committed a murder

down in Kalamazoo and probably if we had got him a sentence that wouldn't have happened.

Q. This incident of the call from Mr. Chapman here in Kalamazo had some effect then on pointing this person out to you more particularly, is that right?

A. That is true.

Q. You recalled a great deal of this and related it to me on this time I called your office and that was at that time without any reference to your notes, wasn't it?

A. That is correct, sir.

Q. So I take it then that Willie Moore was not sent to jail or prison in your case in Grand Rapids?

A. No, he was not.

Q. Had you known him or his family or any of his friends or relatives before that time?

A. No, sir, I did not.

Q. Had you had any occasion to see him or talk about him or his case at any time after that until I dropped in your office?

A. No, sir, not to anyone.

MR. SYKES: I believe that is all.

CROSS EXAMINATION

By Mr. Roxborough:

Q. You are not an attorney, are you, Detective?

A. No, sir.

Q. You weren't a Captain in 1938 either, were you?

A. No, sir.

Q. What was your rank then?

30 A. Lieutenant.

Q. You were handling this case in Grand Rapids, that was your case?

A. Yes, sir.

Q. Therefore, you were interested in the prosecution of it?

A. Yes, sir.

Q. To a successful conclusion?

A. Will you repeat that?

Q. You were interested in the prosecution of this case to a successful conclusion, you were interested in getting a conviction?

A. Well, I couldn't answer that yes or no. My duty is to get them in, bring the evidence to the Prosecutor and then from then on why it is up to the—

Q. You stated that you had told his father, or asked his father, rather, if he wished to employ counsel, is that right?

A. Yes, sir.

Q. Do you have that in your notes there that you made at that time?

A. Not these; some personal notes I have to refer on.

Q. Do you have those notes on that?

A. No, I haven't got them with me.

Q. When you first talked to his father, weren't you interested as a sixteen year old of making restitution and getting him off with a suspended sentence?

A. No, sir.

Q. You testified there was some restitution being made, didn't you?

A. Yes, sir.

Q. When you talked to his father was Willie there?

A. Yes.

Q. Do your notes state he was there?

A. Yes, sir.

31 Q. Would you show us—

A. Not on these, just daily reports.

Q. You talked to him on the 8th, the 14th and the 17th.

A. The conversational notes is in the personal notes I keep to refer on to the—

Q. In other words, these notes you keep referring to you don't have here?

A. I don't have them with me here, no.

Q. You say you were in Court with him, is that right?

A. Yes, sir.

Q. You say in answer to the Prosecutor's question as you recall you don't remember the Judge advising him of his right to counsel. Now, if you don't recall—

A. I do recall; I can repeat again what the Judge said.

Q. You needn't repeat it. As your testimony went, it was just one occasion that you claim you asked his father if he wished to employ counsel, is that right?

A. Well, one or two occasions there because I went down to the County Jail. As a matter, Willie sent for me.

Q. Just a second. In answer to my question, do you remember whether one or two?

A. It was two occasions.

Q. Can you remember that without referring to your notes which you don't have?

A. I have already referred to my notes before I came here.

Q. But you didn't bring them here?

A. No, sir.

MR. ROXBOROUGH: No further questions.

RE-DIRECT EXAMINATION

By Mr. Sykes:

Q. You told me of this conversation with Willie and his parent, I believe, at the time you said you didn't know whether father or step-father.

A. That is right, sir.

Q. You told me this—related that conversation to me in your office on this day before you referred to any notes whatsoever?

A. I did, sir.

MR. SYKES: That is all.

REINT SCHUUR, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?

A. Reint Schuur.

Q. What is your occupation?

A. Attorney at Law.

Q. Have you ever seen this defendant Willie Moore before?

A. Well, sir, whether or not this is Willie Moore, I don't know. My remembrance and recollection is that at the time that he was before Judge Weimer at the day of arraignment that he was heavier than he is now, somewhat heavier; that is my recollection of that.

Q. Do you recall whether or not you were in Judge Weimer's court at the time that a Willie B. Moore was there and pleaded to an offense and was sentenced on an offense?

33 A. Yes, I was in Court at that time.

Q. Do you recall when that was?

A. As near as I can recollect it was some ten or twelve years ago and my recollection tells me that it was on a Saturday, I think in the fall of the year, but I couldn't give you the exact date.

Q. And on this occasion did you have—were you representing either the People or Willie Moore or any person there charged?

A. No, sir.

Q. You were there in Court as a spectator, is that right?

A. Well, I probably had business before the Court which would come up after this matter, or else I was engaged in some other court work in some other court room.

Q. Insofar as this matter is concerned—

A. I had no connection with it whatsoever.

Q. You were a spectator as far as this matter?

A. That is right.

Q. This particular matter involved what offense?

A. The offense of murder.

Q. Do you remember the name of the deceased person?

A. Mrs. Zeedyke.

Q. About what time was that—withdraw that. When did you go into the court room that day?

A. I went in the court room, as I remember, about at the opening of Court.

Q. The opening of Court at that time—

A. About 9 o'clock in the morning.

Q. Nine o'clock. Were you in the court when the person, Willie B. Moore, was brought in the court room?

A. Yes, I was.

34 Q. Do you remember anything about what—how he was dressed or anything about his appearance at all?

A. He looked a little heavier to me at that time than, apparently, if this is Willie Moore—he is now. I don't believe he had a coat on. He had a shirt and trousers, and I believe the shirt was open at the collar. I can

remember his being brought in by the Sheriff and the—one of the under-sheriffs, at least a deputy sheriff. Sheriff Struble, as I remember it. I believe he was handcuffed and the handcuffs were taken off when he got inside the court room. That is, my recollection; that he then—

Q. Do you recall who else was present?

A. John Zeedyke was there and a woman dressed in black was there. I knew it wasn't Mrs. Zeedyke because I knew Mrs. Zeedyke. I have been told since it was his sister. I know that the clerk at that time, as I remember, was Richard Bogard and I can't remember any of the spectators. In my memory, the court room was about half full. The seats were about half occupied. I believe I was the only attorney in the Court room outside of those directly involved in the proceeding.

Q. Do you recall what transpired with reference to this case as you watched the proceedings?

A. Mr. Moore was brought in and he took a position at the front counsel table on the southerly side of the room. It was the other court room. And he stood near the front end of the counsel table and they waited there for two or three minutes for Judge Weimer to come out of his private office. Mr. Tedrow was—as I remember, was seated on the front bench of the court room before Judge Weimer came out of his private office and then Mr. Tedrow got up. Mr. Moore, as I remember, was already standing up. Mr. Struble, as I remember, was either standing back toward the rail in the court room or else he was sitting down. I can't remember which. But then Mr. Tedrow got up and announced that they were ready to proceed in the matter of Mr. Moore, Willie Moore, and Mr. Moore was near the bench, some seven or eight feet away from the bench, and Mr. Tedrow arraigned him, read the information, and then he said, "Which means, and which charges that you did murder on a certain day Mrs. Zeedyke."

MR. ROXBOROUGH: Excuse me, your Honor. I will object to this testimony as not being the best evidence of the proceedings. We have admitted into evidence here the certified copy of the Reporter's report of what went on. Any other testimony which will vary or change that record which is admitted into evidence and which is the best evidence I feel is incompetent.

THE COURT: I understand there was no report—this is the arraignment?

MR. SYKES: Yes. I was referring to what happened on the arraignment. The record merely shows he was arraigned, as I understand it.

MR. ROXBOROUGH: Just one second, your Honor. (Examining record) It was my opinion that he came before the Court at one time and all these proceedings took place at that one time.

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36 FORD R. WILBER, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?

A. Ford R. Wilber.

Q. What is your occupation?

A. Court stenographer.

Q. And for what court are you the stenographer?

A. I am in Judge Sweet's court—or Judge Fox's Court. Circuit Court for the County of Kalamazoo.

Q. Ninth Judicial Circuit?

A. That is right.

Q. How long have you reported for the Circuit Court for the County of Kalamazoo?

A. Since 1921.

Q. Were you reporting in 1938?

A. I was.

Q. Do you recall whether or not you took any or part, or anything, on the record of the case of the People vs. Willie B. Moore?

A. I do.

Q. Do you recall—what record did you take on the matter?

A. I haven't refreshed my memory but I know that I took the testimony of several witnesses and transcribed that.

Q. Do you know whether or not you took the testimony—or I guess it wouldn't be testimony—but do you recall whether you took any of the conversation that occurred at the time of the arraignment?

A. I don't think so.

37 Q. Was there conversation between the Court and the defendant that you did not take?

A. Well, I hate to testify to that because I don't remember. I presume there was, however.

Q. Have you prepared a transcript of everything you did take?

A. I have.

Q. Is that in the record now?

A. It is.

Q. You prepared it for the Court, is that right?

A. That is right.

Q. That record that you prepared is a transcript of everything that you took, is that right?

A. That is right.

Q. If that transcript that you prepared contained a statement "Arraigned and pleaded guilty," what would that mean?

A. Well, at that time we didn't take any testimony on the arraignments. It was my understanding that he offered to plead guilty and this testimony was taken to determine the degree of murder.

Q. But the transcript that is in the file now is everything that you did take, is that right?

A. That is right.

Q. And if that transcript contained nothing about the arraignment, then, would you be able to say whether or not there was something additional said that you didn't take?

A. I wouldn't be able to say. I might not even have been in the court room when he was in there first.

Q. Do you wish to ask some questions?

38 CROSS EXAMINATION

By Mr. Roxborough:

Q. In 1938 you say it was not the procedure to take notes at the arraignment, is that right?

A. That is right.

Q. Now do you take notes at the arraignment?

A. We do.

Q. How long have you been doing that?

A. Well, it was since the DeMeerleer case so-called.

Q. Do you recall whether or not you were present when Willie Moore was arraigned then?

A. I couldn't say whether I was or not.

Q. You don't know whether you were or not?

A. That is right.

Q. You were Judge Weimer's clerk at that time, 1938?

A. I reported for him.

Q. I mean, reporter, rather. You had been reporter for him some time?

A. Since 1921.

Q. Was it his practice to call an accused into his private chambers and take the arraignment or would he arraign them in open court?

A. Usually he would arraign them in open court and if they plead guilty, take them in his private office to talk to them.

Q. Were you usually present at the arraignments?

A. Oh, not always.

Q. You don't recall whether you were present at this arraignment or not?

A. I can't remember.

MR. ROXBOROUGH: That is all.

THE COURT: That is all, sir.

(Witness excused).

39 THE COURT: The objection is overruled to the testimony of Mr. Schuur.

MR. ROXBOROUGH: I beg your pardon, as to the testimony—

THE COURT: As to the testimony of Mr. Schuur the objection that you made is overruled.

MR. ROXBOROUGH: Just a clarification. Will his testimony then be limited to that which was—transpired at that arraignment, so-called?

MR. SYKES: Yes, as far as I am—

THE COURT: I would think that anything that was said after Mr. Wilbur came in and started to transcribe the record, the best proof of that would be the record. As I understand it, Mr. Wilbur transcribed all of the testimony that was taken by the witnesses after the plea was entered.

MR. SYKES: That is my understanding.

THE COURT: I haven't read the record today. I read it at the time you gentlemen were in court the last time but I would think this testimony would be limited to the arraignment.

MR. ROXBOROUGH: All right, your Honor.

THE COURT: Because of the basis of the present record we have no way of knowing what transpired at the arraignment except from the mouths of those who were there. We have no record of that.

MR. SYKES: I believe that so far that the testimony this witness has been confined to things that occured during the arraignment, is that right?

THE WITNESS: That is right.

THE COURT: Just let me interrupt. Let me correct myself. I said we have no record of that. We have no record of that beyond the record of a mere statement in the record that he pleaded guilty but as to what was said, if anything, we have no record. So you may proceed.

40 REINT SCHUR, having resumed the stand, testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. Sykes:

Q. I believe you were relating what occurred as—I think you related that Mr. Tedrow, the Prosecutor, had read the information. I don't know whether you related Willie Moore's statement or not. Would you go on from where you were last discussing the happenings?

A. I think that for the benefit of the record I should say that I am not here voluntarily.

Q. You are under subpoena?

A. I have been subpoenaed into this Court. I rather dislike being a witness but I was subpoenaed and I had to come.

Mr. Tedrow read the information to Mr. Moore and followed the actual reading of the information by telling him in effect the information charged him with the murder on a certain day of Mrs. Zeedyke, and asked him whether he pleaded guilty or not guilty to the information and Mr. Moore said he pleaded guilty. Mr. Tedrow at that time said nothing more. Then Judge Weimer asked Mr. Moore if he realized the fact that if he, the Judge, deter-

mined that the plea was a good plea and should be accepted, that he could sentence Mr. Moore to prison for life.

Mr. Moore said he realized that. Then there was some conversation between the Judge and Mr. Moore relative to whether Mr. Moore had a lawyer or wished a lawyer, desired a lawyer. I don't remember whether the Judge asked him whether he had a lawyer or whether he wanted a lawyer, but there was some conversation about a
41 lawyer. That is as far as my recollection goes on that.

Mr. Moore, according to my recollection, said he didn't want one, didn't have one, he wanted to get it over with. The Judge then proceeded to inquire into some of the facts concerning this murder in open court, and asked him how he happened to be there and what occurred and if he did murder the woman. The conversation went for some fifteen minutes, according to my recollection, and after that was over the Judge told Mr. Moore that he would take him into his private chambers and talk with him. After staying in the private chambers for some five to ten minutes, Mr. Moore and the Judge came out and the Judge announced that the plea would be accepted and that they would have to take some testimony regarding the degree of murder and some testimony was taken of other witnesses.

Q. After that there may be some record of it?

A. I don't know whether Mr. Wilbur was in the court room or whether a record was taken. I suppose it was because they were under oath.

Q. You disclosed to me that you would recall something about this matter in some casual conversation I had with you, is that right?

A. Well, Mr. Sykes, I picked you up, I believe it was a rainy morning, upon West Street Hill, and drove you down town and just mentioned to you that I had noticed a petition had been filed to re-open the Moore case and I said that I had happened to be in the Court room. I know I shouldn't have said it now. At the time that he was arraigned and pleaded guilty, and the next thing I knew I had a subpoena.

THE COURT: You say you shouldn't have said it because it got you here as a witness?

A. Yes.

42 THE COURT: You didn't mean by that that you shouldn't have said it because it wasn't true or anything?

A. Oh, no, no, it just means that I rather dislike being a witness in a matter of this kind, but probably just a question of having talked a little too much to the Prosecutor.

Q. You related, then, your best recollection of the occurrences of that particular day?

A. That is right.

MR. SYKES: You may inquire.

CROSS EXAMINATION

By Mr. Roxborough:

Q. How does it happen you remember the intimacies of the conversation so well, counselor, was there something peculiar about this case?

A. Which conversation?

Q. I mean the conversation that went on in Court that day between Moore and the Judge?

A. Well, it rather stood out in my mind because it—if the newspaper accounts had been correct it was a revolting crime and I happened to be there and I didn't come over for that purpose but I happened to be in Court and I distinctly remember that that is what happened.

Q. You distinctly remember that the Judge informed Willie Moore he would be sentenced to life.

A. That he could sentence him to life.

Q. You remember that distinctly?

A. I remember that distinctly.

Q. Did the Judge also inform him he had a right to a jury trial?

A. I don't remember anything of that sort.

43 Q. You don't recall whether he did that or not?

A. No, there was something said by the Judge asking whether he had counsel or whether he wanted counsel.

Q. Do you remember what was said?

A. It was one of the two but I can't tell you which.

Q. Do you remember what Moore answered?

A. As near—my recollection tells me, as near as I can remember, that he didn't want anything to do with lawyers, he wanted to get it over with.

Q. Did you talk with the Prosecutor before or after you read an account in the paper about this petition?

A. After I had read in the paper that a petition for a new trial had been filed I casually mentioned it to him while driving down town that I had happened to have been in the court room at that time and he seemed somewhat surprised and it completely passed out of my mind until, I think it was three days ago, while I was up in the dentist's office, the deputy sheriff came in and handed me a subpoena.

MR. ROXBOROUGH: Nothing further, thanks.

THE COURT: That is all, sir.

MR. SYKES: That is all.

(Witness excused).

MR. SYKES: Mr. Zeedyk.

JOHN ZEEDYK, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?

A. John Zeedyk.

44 Q. And what is your occupation now?

A. I am part owner of the Nu Enamel Distributing Company.

Q. You have lived in Kalamazoo quite some time?

A. All my life.

Q. You were at one time employed by the County of Kalamazoo, were you?

A. By the County of Kalamazoo and the State of Michigan.

Q. In what capacity?

A. As County Agent.

Q. And in that job what duties did you have just briefly?

A. The duties that would concern this case today where dealing with juvenile delinquents and bringing the report to the juvenile court.

Q. You at one time had as one of your juvenile probationers Willie B. Moore, did you?

A. Yes, sir.

Q. Is this defendant here in the court room the same one?

A. That is the same fellow.

Q. It was your mother, was it—

A. My mother that he murdered.

Q. That he murdered. And do you recall being in court on the day of his arraignment in court?

A. I was in Court Saturday morning.

Q. And were you in the court room in court before he, Willie Moore, arrived?

A. I was in the court room before he arrived.

Q. And do you recall anything about the circumstances of his being brought in?

A. I remember him being brought in by Sheriff Struble and of course passing in front of us to the counsel table.

45 Q. Where were you seated in the court room, do you recall?

A. I was seated on the first row behind these same benches as you have them, only in the other court.

Q. And Judge Weimer was on the bench, was he?

A. I was there before Judge Weimer came to the bench, yes.

Q. After Willie Moore was in the court room then Judge Weimer came in?

A. Yes, Judge Weimer came in.

Q. What happened then?

A. Paul Tedrow, I call it perhaps not by the right name—brought in the charges or gave the complaint, and then, of course, Mr. Moore acknowledged or plead guilty to this, and the Judge went into detail—I called it in detail—and, in fact, it rather irked me, if I say I give you this so you may know why it stands out to me. He asked him whether he had a lawyer and he also asked him whether he desired to have a lawyer, and to the answer of this both was no, and to me I couldn't imagine a man who admitted such a terrific crime to me I couldn't understand why they would take that. I know now today but I didn't know then and I was particularly interested in following this procedure because in juvenile court I sat, naturally, at the table with the Judge and was well versed, if I may put it, or had knowledge and knew that no case ever came into juvenile court without Judge Hollander, and later years Judge Fox, asking the

parent whether he wished counsel for their child in any particular hearing that was heard downstairs. We call it downstairs—in juvenile court at the time. And so I know because I heard and because I was there and because I listened that Judge Weimer asked these things of Mr. Moore and I know his answer was "no".

46 Q. Did Judge Weimer go into the details of the offense?

A. Yes.

Q. With him. Do you recall whether or not Judge Weimer talked with Willie Moore privately?

A. Yes, Judge took Willie Moore into his private chamber and again I couldn't understand why a man would go in with a man who had confessed this thing to take up that time because my sister's heart was bleeding and I certainly felt terrible, but now I know he wanted no stone left unturned.

Q. You refer to Judge Weimer?

A. I refer to Judge Weimer.

MR. SYKES: You may inquire.

CROSS EXAMINATION

By Mr. Roxbo[illegible]ugh:

Q. Do you remember whether a gentleman was sitting in this seat, or a seat similar to this taking notes?

A. I do not remember at that time whether Ford Wilber sat in the seat taking notes.

Q. You don't recall?

A. I do not recall.

Q. These other things stand out in your mind very well?

A. Yes.

Q. You remember those?

A. Yes, I do.

Q. But you don't remember whether the Reporter was present or not?

A. No, I don't remember. I know he was during the testimony but other than that I couldn't say.

Q. Did you know the counselor—I have forgotten his name—at that time?

47 A. Mr. Schur?

Q. Yes, did you know him at that time?

A. I have known him a long time, being a citizen of Kalamazoo all my life.

Q. You don't remember him being in Court at that time?

A. I do not remember him being in court that day specifically.

Q. You don't know whether he was there?

A. I didn't look for him.

Q. You couldn't say he wasn't there?

A. I wouldn't say he was there and I wouldn't say he wasn't.

You want to remember we came to court with a heavy heart, not an open eye.

MR. ROXBOROUGH: Yes; no further questions.

THE COURT: Do you remember whether Judge Weimer had any conversation with Moore in which he told him anything about what might happen to him if his plea was accepted?

A. Yes, he told him of the seriousness of it and the consequences and what would happen or could happen to him because of his confession.

THE COURT: What did he tell him, as you remember?

A. To me my memory tells me plainly that he told him a crime like this could be a commitment to prison for life.

THE COURT: Do you remember any conversation was had between Judge Weimer and Moore with reference to whether any promises had been made to Moore?

A. No promises made, no threats; no, no threats; it was a genteel—

THE COURT: I mean, did Judge Weimer make any inquiry of Moore as to whether or not anybody had threatened him or promised—

48 A. Yes, he asked whether this was a voluntary confession without coercion and so forth.

THE COURT: Do you remember whether Judge Weimer said anything to Moore about a jury trial?

A. That I do not him saying about a jury trial. All I know is that he did not have counsel nor did he desire counsel.

THE COURT: Immediately upon Judge Weimer's returing to the court room after he and Moore had gone into Julge Weimer's office, do you remember anything that Judge Weimer may have stated then?

A. He had the record before him — now, whether this record was of, as I call the individual who was in the capacity of Floyd Williams today, to give the report of this boy, I don't know, but he had this and carefully went down through and enumerated these revolting things and finally came down to that part which I call sentencing him.

THE COURT: Perhaps that last answer should be stricken. I am not sure that wasn't after the Reporter began taking the proceedings. Is there anything else from this witness?

MR. ROXBOROUGH: Nothing further.

MR. SYKES: No.

THE COURT: That is all, Mr. Zeedyk.

MR. SYKES: That is all the testimony I have to offer. (Witness excused).

MR. ROXBOROUGH: May it please the Court I brought this delayed motion for a new trial firstly on the record and with Mr. Moore's affidavit. Our case was predicated on the record on several grounds, that he was hurried through unfamiliar legal proceedings, was not explained the consequence of his plea, didn't have a right to counsel, wasn't advised of his right to counsel, and
49 because of his tender age. The case was closed on that basis, and subsequently I heard from the Prosecutor informing me that he had newly discovered evidence, so, thusly, since the Prosecutor had gotten outside the record, mainly on the issue of whether Willie Moore intelligently waived his right to counsel, or whether, as these witnesses have stated, the Judge did apprise Willie Moore of the consequences of his plea, I feel constrained at this time to call Willie Moore to the stand in rebuttal to answer on these issues only.

THE COURT: You may do so.

MR. ROXBOROUGH: I feel he should have his day in court.

THE COURT: You may do so.

WILLIE B. MOORE, the Respondent herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Roxborough:

Q. What is your name?
A. Willie B. Moore.
Q. You are the petitioner in this cause, is that right?
A. That is right.
Q. You were arrested on the 26th of October, 1938, is that correct?
A. That is right
Q. How many days after that were you brought into Court?
A. That is where, in Kalamazoo here?
Q. Yes.
A. I was brought into Court on Saturday about 7 o'clock in the morning.
Q. Is that the 28th, you recall?
A. The 29th, the same day I was sent to prison.
Q. About three days after you had been arrested, is that right?
A. That is right.
Q. During that period did you contact your family?
A. I didn't have a chance to contact them.
Q. Were you given an opportunity to contact your family?
A. No, no kind of way.
THE COURT: I didn't get that.
A. No kind of way; I wasn't given a chance.
Q. This happened in October, on the 28th of October, is that correct?
A. On the 29th of October, Saturday, the 29th of October, 1938.
Q. Did you plead guilty that morning?
A. I did.
Q. Did the Judge advise you of your right to counsel?
A. No, the Judge didn't advise me of anything.
Q. Just answer my question.
A. No.
Q. Was your plea voluntary?
A. No, it was not.
Q. Why wasn't it voluntary?
A. Because the Sheriff's Department officials up there, they told me that if I didn't plead guilty to this crime, they

couldn't protect me, under those conditions, they, says, during the riot, that they didn't know what people they would do, and that they couldn't protect me.

Q. Is that why you pleaded guilty?

A. That is why I pleaded guilty.

51 Q. Did you realize at that time by pleading guilty you could go to the penitentiary for the rest of your natural life?

A. I did, but there wasn't anything else for me to do. There was no other alternative.

Q. Who told you that?

A. Well, didn't no one tell me about that.

Q. Just knew it?

A. That is the way I felt personally.

Q. You knew you had the right to get an attorney or have the Court appoint an attorney?

A. No, I did not.

Q. You didn't know that. Didn't Detective Coe tell you that up in Grand Rapids?

A. No, sir, Detective Coe did not tell me that.

Q. You have heard witnesses state here that the Judge did explain the consequences of your plea to you.

A. I have.

Q. You have heard them also say that the Judge said you had a right to counsel, is that right?

A. Yes.

Q. Did that happen in fact?

A. No, sir, it did not.

Q. You confessed to this murder under duress, is that what you are stating to the Court?

A. Yes, I did. That is the only why I did.

CROSS EXAMINATION

By Mr. Sykes:

Q. You remember being over in Municipal Court before Judge Stewart?

A. I do.

Q. At which time you waived examination, didn't you?

52 A. I didn't waive anything. Mr. Tedrow, the Prosecutor, he read off an account of this here crime

to Mr. Stewart and Mr. Stewart he accepted this here account of the crime Mr. Tedrow read off to him.

Q. That was on the 28th, wasn't it?

A. No, sir—I believe—yes, that was on the 28th.

Q. Friday afternoon?

A. Friday afternoon.

Q. You say you were in court here at 7 o'clock?

A. Seven o'clock that next morning they come up and woke me up.

Q. Was Judge Weimer there at 7 o'clock?

A. He must have been there.

Q. Was there a judge there?

A. Everyone was there, Prosecutor, the Judge and everyone else concerned was there.

Q. That was the only time —

A. They few people that they wanted was here. Even my parents wasn't here. Didn't even notify them.

Q. That was the only time you were in Court, was it?

A. Yes, sir.

Q. Just that morning?

A. Just that morning, and I was taken to prison that afternoon.

Q. You stated to Mr. Roxborough that you knew that you would go to prison for life if you pleaded guilty.

A. Well, I didn't know no more than what they told me.

Q. You were told that then?

A. Well, yes, I was told.

Q. Do you remember Mr. Coe, do you?

A. Yes, I do.

Q. Do you remember this automobile theft up at Grand Rapids?

Rapids?

53 Q. You remember seeing and talking to Mr. Coe in his office?

A. Well, if you want me to explain that I will explain it to you in details.

Q. Just want to know if you remember talking with Mr. Coe up there.

A. Not the way he said, no.

Q. Was your father up there?

A. No, e was not.

Q. Did he ever come up there?

A. No, he did not. My mother came up there, not my father.

Q. Your mother came up. Did you talk with Mr. Coe and your mother?

A. No, not together, I did not. I talked to Mr. Coe alone on the day I was taken for this here charge to the Court.

Q. For the automobile charge?

A. Yes, sir.

Q. You got a suspended sentence that time?

A. Well, what happened, yes, I got a suspended sentence. Mr. Coe and my mother — Mr. Coe had seen my mother and they had agreed to pay the damages on this here automobile larceny and when I went before the Judge Mr. Coe told me to plead guilty, that everything was over with, which I did plead guilty to it and I was then immediately released from the court right then and there.

Q. Didn't the Judge ask you anything about what —

A. The Judge didn't ask me anything.

Q. Didn't ask you whether you had stolen the car or not?

A. He didn't ask me anything. I told you I was released there. He asked me was I guilty and I says
54 yes, and then he released me. Said, "The charge is dismissed."

Q. Did he ask you if anybody promised you anything?

A. He didn't say if anybody promised me nothing.

Q. Was that Judge Taylor?

A. I don't know the Judge, I don't know who it was.

Q. You don't know his name?

A. No.

Q. Didn't that Judge tell you about your right to have a lawyer if you wanted one?

A. No, he did not. That wasn't even mentioned.

Q. You were up to BVS?

A. I was up there, yes.

Q. You talked to a lot of fellows up there, young fellows, didn't you?

A. What do you mean, I talked with a lot of young fellows?

Q. A lot of other fellows in there? Didn't you talk about lawyers and being able to have lawyers and things of that type?

A. Well, the fellows of those ages they don't talk about them things.

THE COURT: By "BVS" you mean Boys Vocational School?

MR. SYKES: By BVS I mean Boys Vocational School in Lansing.

A. They was thinking about getting out. At least I was.

Q. You remember Judge Weimer taking you into his private office?

A. Yes, Judge Weimer did take me into his private office.

Q. He talked with you in there all about the offense?

A. With a sheriff official, I believe it was Mr. Struble.

Q. Mr. Struble was in the office there?

55 A. Yes, sir.

Q. There weren't any other people there?

A. No, I don't believe that there was. The reason I remember this here was Mr. Struble, because it was led all the way through. He asked me certain things about this here crime and he led it all the way through there; after the man tell me he couldn't protect me then there wasn't nothing I could do. I was mostly scared than anything else.

Q. There weren't many people in the court room that morning, were there, when you were in court and arraigned?

A. No, there wasn't many people here.

Q. Do you remember the witnesses that testified and told about what had happened, do you remember them?

A. I remember some of them, yes. I can't remember all of them. There was a couple of doctors, and I believe Mr. Zeedyk's sister and the Sheriff. I believe that was all. There was a couple else, the police officers.

Q. You remember hearing them testify?

A. Yes, I do.

Q. Do you know what a lawyer is?

A. Yes, I know what a lawyer is.

Q. Did you prepare your papers in prison?

A. Yes, I did.

Q. For the motion. What makes you so sure it was 7 o'clock in the morning that you were in Court?

A. I know it was early in the morning. I don't know exactly whether it was 7 or not, but I know it was early in the morning.

Q. Do you remember Mr. Tedrow telling you or reading to you the charge against you?

A. Mr. Tedrow did read the charge.

Q. You remember that, do you?

56 A. Yes.

Q. Do you remember the Judge telling you about the fact you could have a trial by jury if you wanted it?

A. The judge did not tell me I could have no trial by jury.

Q. What did he do after Mr. Tedrow read you this charge and said you are charged with the murder of Mrs. Zeedyk and you said "I am guilty?"

A. The judge asked me if I was guilty and I said yes.

Q. Is that all that happened?

A. That wasn't exactly all that happened. He asked me, he says, "Are you guilty?" I says "Yes". And then he says "Why?" And I didn't say anything.

Q. Is that all that happened there?

A. No, that wasn't all that happened.

Q. What else happened?

A. I was threatened upstairs there.

Q. I mean in Court, what else happened?

A. Mr. Tedrow, he questioned those others. The Judge talked back and forth amongst themselves and questioned those other witnesses. The Judge taken me into hi- chamber right after I plead guilty to the thing.

Q. Well, he talked to you —

A. There was no talk made after I plead guilty, not out here. He taken me into his chambers.

Q. In his chambers did he tell you about being able to have a jury trial if you wanted it?

A. He didn't talk about a jury trial. He asked me — he went on and asked me how old I was, how much schooling I had and so forth and so on like that.

Q. Did he ask you why you were pleading guilty?

A. No, he did not.

Q. Did Judge Weimer ask you in the chambers anything about your being in BVS?

57 A. Yes, he did.

Q. Did he ask you something about being in a CCC Camp?

A. Yes.

Q. Did he ask you anything about stealing an automobile up to Grand Rapids?

A. Yes.

Q. Did he ask you anything about whether you worked at odd jobs out to Mr. Zeedyk's house?

A. Yes, he did. I told the Judge at that time that if I had have committed this here crime that Mrs. Zeedyk she would have knew me, knowing me as well as she did that she would have made the statement that—who it was.

Q. Did you say something to the Judge in chambers about your wanting to get to some institution so you could get some care or observation?

A. I didn't tell him about getting to no institution for no care or observation. I told him I wanted to get away from this mess here.

Q. When the Judge states what he told you when you were in chambers most everything he said was correct, is that right?

A. Judge— will you repeat that again?

Q. Do you remember when you came out of the chambers and before you were sentenced you remember the Judge telling you, or telling for the purpose of the record, something about what had gone on when you were in his private office?

A. Yes, I do.

Q. Do you remember him telling that, do you?

A. I remember him reading something like that to the Court.

Q. It sounded like he was reading it?

58 A. It didn't sound like it was reading, the man was reading.

Q. You saw some paper he was reading from?

A. Yes, he was reading from some paper.

Q. That was after you had been in his chambers?

A. That was after I had been in his chambers.

Q. And he was reading this for the record?

A. It was after I had been in his chambers and he had come out and he had examined three or four of these other witnesses. That was just before he got ready to sentence me.

Q. Then he read something in which he told about what went on in the chambers?

A. That is right. It wasn't all true but he did read something there.

Q. Parts of it were true?

A. Parts of it were true. Part of it wasn't. Part was what Mr. Struble and Mr. Tedrow had told him.

MR. SYKES: I think that is all.

RE-DIRECT EXAMINATION

By Mr. Roxborough:

Q. Now, Willie Moore, before you step down do you think in your own mind of any fact or circumstances you want to call to the attention of the Court, anything further you want to say to the Court concerning this matter?

A. Well, yes, I do. My mother is in the court room here. She can verify the fact that she wasn't notified the morning that I was—had this so-called trial. I wasn't given a chance to contact them in any way. Even though I did ask Mr. Chapman in the police headquarters that I wanted to see my mother and father for the purpose of getting
59 some king of counsel, but I was denied this counsel all the way through and in the police station and also by the Sheriff's Department.

Q. Anything further you wish to tell the Court personally about your experience?

A. No.

MR. ROXBOROUGH: You may step down.

THE COURT: Just a moment, let me—

RE-CROSS EXAMINATION

By Mr. Sykes:

Q. You tried to see your mother and your father?

A. Yes, I did try to see them.

Q. You tried to see them so you could have them make some arrangement to get you a lawyer?

A. That is right. I wasn't permitted to see them until after I was sentenced. They had about a half hour or so to see me right after I was sentenced.

Q. Then you did know about the fact that you could have a lawyer?

A. I wanted to see them to get someone; I didn't know whether I had a right to counsel or not, no. I can't answer that yes.

Q. You did know about lawyers, and that they were to help people who were in trouble in court?

A. Yes, I knew about lawyers.

EXAMINATION

By the Court:

Q. Let me see if I understand you correctly. When Judge Weimer took you into his office did you say that Sheriff Struble went along?

A. He did go along.

60 Q. You weren't alone with Judge Weimer?

A. No, I wasn't alone.

Q. Sheriff Struble was there?

A. Sheriff Struble was there reading off some of these here details as they call them, these revolting details of this here crime.

Q. Sheriff Struble did that reading?

A. Yes, sir, he did.

Q. Did I understand you to say that Sheriff Struble had told you that morning, or the night before, or some time—

A. He told me he could not protect me, yes, sir.

Q. When did he tell you that?

A. He had told me that that night.

Q. The night before you were brought into court?

A. The night before I was brought into court. There was loud noises and hammering on the cell door. I was put in an isolated cell.

Q. Do I understand you to say you knew Judge Weimer didn't tell you but that you knew that murder carried life?

A. No, sir, I did not.

Q. You didn't know that?

A. No, sir, I didn't.

Q. Did you know you were pleading guilty to murder?

A. I didn't know what—all I was pleading to was trying to get away from here, trying to get away from this mess.

Q. That was the reason you were pleading guilty, but what were you pleading guilty to?

A. I don't know what I was pleading guilty to.

Q. Did you know anything about some charge being made that a woman had been killed?

61 A. Mr. Chapman, he put a paper in front of me, I guess—I believe it was Wednesday night he put a paper before me because Mr. Zeedyk he came over there and Mr. Chapman said to stop him because he made some attempts at me in the police headquarters over there and Mr. Chapman he held him off.

Q. Did you know that a woman had been killed?

A. No, I didn't know nothing.

Q. You didn't know you were charged with having killed her?

A. No.

Q. You didn't know?

A. They didn't tell me that until—

Q. I am talking about when you were in court, when you were in court.

A. Oh, I knew I was charged—

Q. You knew you were charged with murder?

A. Yes.

Q. Mr. Tedrow read it off to you?

A. Yes.

Q. You knew murder carried life?

A. No, I did not.

Q. You didn't know it?

A. I wasn't familiar with no law at that time.

Q. What did you think it carried?

A. I didn't think it carried anything. I didn't know what anything carried because I hadn't come in contact with the law.

Q. You had never come in contact with what?

A. I was only a juvenile. I come in contact as a juvenile but not, well, as a man, you might say.

62 CHARLES STRUBLE, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Sykes:

Q. Your name is Charles Struble?

A. Yes, sir.

Q. You live in Kalamazoo, do you?

A. I do.

Q. And you have lived here for quite a while?

A. Yes, sir.

Q. About how long?

A. About forty-five years.

Q. You were formerly the Sheriff of Kalamazoo County, is that right?

A. I was.

Q. You were the Sheriff in 1938, were you?

A. Yes, sir.

Q. Do you know Willie Moore?

A. I do.

Q. Is this man seated here at the counsel table beside Mr. Roxborough, is that the Willie Moore you know?

A. I would say so. Considerably older than the last time I saw him.

Q. You remember the day he was in court for sentencing, or for arraignment?

A. Yes, sir.

Q. Do you remember whether or not he was talked to by Judge Weimer in Judge Weimer's office privately?

A. He was.

Q. Do you remember—would you tell us what happened when he went into Judge Weimer's office?

A. The only thing that I can say is that he was called into the office and I didn't go in the office with him.
63 I went out the side door of the court room and around to the—the door that enters into the Judge's office from the north and stayed on the outside there.

Q. Do you know if there were any other officers at the other door into the court room or into the chambers?

A. There was.

Q. Was that another one of your sheriff's officers?

A. Yes, sir.

Q. And during the time the Judge was talking with him, were you in the room at any time?

A. I was not.

Q. Did you live up in the jail or up on the fifth floor of this building, the County Jail?

A. Yes.

Q. In an apartment adjoining the jail up there?

A. Yes, sir.

Q. While you were living up there was Willie Moore in your jail?

A. He was.

Q. During the time that he was in the jail were there any mobs or any large groups of people that were either up in the jail or in the building?

A. There was not.

THE COURT: Or on the lawn or anywhere around?

A. No, sir.

MR. SYKES: I believe that is all.

CROSS EXAMINATION

By Mr. Roxborough:

Q. Do you remember when you first met Willie Moore—did you know him prior to this incident?

A. Prior to the time he was—of his arrest?

Q. Yes.

64 A. Yes, sir.

Q. You knew him prior to that?

A. Yes, sir.

Q. As I understand it, this alleged murder was committed on the 26th of October, 1938.

A. I would have to check to know.

Q. I believe it was on a Wednesday, as the dates run, or—how soon after that was Willie Moore brought to your custody, if you can recall?

A. It was very shortly after that. I don't recall.

Q. Shortly after that. He was in your custody for approximately how many days, as you remember it?

A. Well, he was up in there, I wouldn't think more than a day.

Q. See if I can refresh your memory. It seems this crime was committed on the 26th of October and he finally went to court on the 29th, a Saturday morning. Does that refresh your memory any?

A. That could be.

Q. He was in your custody how many days of that time, do you remember?

A. You mean prior to the arraignment?

Q. Prior to his going to court.

A. It could have been a day or two.

Q. During that entire period no crowds gathered around the jail?

A. No, sir.

Q. This crime did carry newspaper headlines, is that right?

A. Yes, sir.

Q. Wasn't there—would you say there was any tension in the community?

A. I would say very much so.

Q. As you remember, there were no crowds around the jail, is that right?

65 A. No, sir.

Q. You were out on the street during that time also besides being in the jail?

A. I was around the regular routine of my work.

Q. Did you hear any talk around the streets of any potential mob violence?

A. Well, yes, there was conversation all about the streets in regards to it and making their remarks. I don't know as I could go into them.

Q. No crowds gathered as you remember?

A. I don't recall of any crowds gathering.

Q. Did you tell Willie Moore that you couldn't protect him or words to that effect during any—

A. No, sir.

Q. You didn't tell him that?

A. No.

Q. You didn't advise him it would probably be best to plead guilty?

A. Well, the only way I could answer that right is just to give you a little of the conversation there, perhaps, if you wish me to.

Q. Relate that, that will probably be helpful.

A. In talking with Willie Moore—that was before he had made any statement—I told him that if he was guilty of it he might better own up on it because I says there could be trouble. Tension is very high outside and there could be trouble. If you are not guilty of it, why then, I says, I would stand pat forever after. Then I told—I spoke to him about what would be required of him and I would have to take him to the Municipal Court for his arraignment in the lower court and then back over there, and I told him he would be entitled to a hearing in lower

court and I says, "There you will have the Judge read to you and you can waive or demand an examination. You are
entitled to an examination over there. It is my duty,
66 and it is up to me, to protect you, to use every effort
at my command to protect you, but, I says, "the tension is high out there and I am just telling you what could happen if it was started by someone." I don't know the language I used.

Q. But you did tell him the tension was high in the community, is that right?

A. It was high.

Q. Did you also tell him if he plead guilty he would be sent to Jackson immediately? Do you remember saying anything like that?

A. I don't know as I come out and said at any time for him to plead one way or the other, but what I was putting over to him was the fact that if you are guilty and will be sent away you might better be getting away before trouble because I had had information there was certain colored fellows, a group of them, that was going to interfere with me, and also that there was a bunch of Holland fellows going to meet me when I go to Jackson, they would meet me there at Galesburg there, and, therefore, when he was sentenced I avoided the main route and went way through by Gull Lake and across over in the hills there."

Q. The police—officers from the Police Department brought him to your jail, is that right? Isn't that the usual procedure?

A. I think they did. He was picked up by the police officers and I don't know whether they took him to the Police Headquarters first or not but I think they brought him right to the jail. I am not sure about that.

Q. You are not sure?

A. No.

67 Q. While he was at your jail do you remember any police officers or any officers on your staff threatening him?

A. Oh, not at all.

Q. Or intimidating him?

A. Oh, no.

Q. You don't recall that?

A. I don't recall that and I doubt very much if there

was anything of that kind because he was treated with respect all the way through.

Q. Did Mr. Willie have access to any of the newspapers at that time. Were the prisoners able to read the newspapers at that time in the cells?

A. I don't know if he had one of them to read or not. We didn't keep newspapers from them.

Q. You didn't keep them from them though?

A. Not necessarily.

Q. You came up to the court with him that Saturday morning, is that right, the Saturday morning you came to court?

A. Yes, I came up here with him.

Q. When Judge Weimer called him into chambers did you go in with him?

A. No, the officer never did go into the chambers with Judge Weimer.

Q. He would always take the prisoner in by himself?

A. He would go in with the prisoner. I don't know if it was the court officer that I directed over to the door that goes in from this court room, but I know I went out the side door and come around and stood on the outside of the door that goes out from the north entrance to the Judge's office.

Q. During that day in court did you read any paper to the Judge concerning the details involved in this
68 crime—I presume the confession of the accused, did you read it?

A. No, I don't believe that I did. I don't recall anything of that kind.

Q. Do you remember any mobs around on the day you came to court, or any groups of persons around?

A. Well, when court was in session on this case there was quite a group of people around but nothing that appeared like unusual violence or anything of that sort.

Q. Do you recall of anyone beating on the door of the county jail at any time while Willie was in custody?

A. No.

Q. You don't recall that?

A. No. No doors up there you can beat on very well. It is all steel doors and he was in a segregated cell up there by himself.

Q. Did his family visit him at any time when he was in your custody?

A. I don't recall that they did.

Q. Do you recall he was given an opportunity to call his family?

A. I don't believe there was any request made by him. I don't recall any request made by him.

Q. You don't recall the request?

A. No.

Q. During the time he was in custody were there any outsiders who were brought up into the jail proper and who beat on his cell door, do you recall that?

A. I don't believe so; not to my knowledge.

Q. But you do remember that tension was high in the community?

A. Oh, it was high in the community, yes.

Q. You stated you came with him to that court on that Saturday morning, is that right?

69 A. I believe I did.

Q. Do you remember approximately the hour that you and Willie came to court? Was it very early in the morning?

A. The details as to time on it I wouldn't be able to say.

Q. You wouldn't say. Would you say it was in the morning or would you say it was in the afternoon?

A. Well, I think it was along — well, it would be just a wild guess.

Q. Do you remember taking him to Jackson immediately after you left court?

A. I do.

Q. How shortly after did you take him to Jackson?

A. Well, it was about, I would say, two days possibly.

Q. You didn't take him that day? Think, now; if you don't recall, say you don't recall.

A. Well, there is one thing that attracted my attention. I took him the same day of the funeral of Mrs. Zeedyk.

Q. You didn't take him the day of the trial?

A. May have took him right after sentencing, but I am not sure about that.

Q. You can't recall?

A. I can't recall that.

Q. Twelve years ago is a pretty long time back.

A. Quite a while ago.

Q. Were you in the court room when he was arraigned?
A. I think I was, the circuit court, yes.
Q. Circuit Court here by Judge Weimer?
A. Yes.
Q. Do you recall the conversation that took place between Judge Weimer and Willie Moore?
70 A. That was in his office.
Q. I mean here in the court room.
A. Oh, I couldn't tell what it was now.
Q. You couldn't tell what it was now?
A. No.
Q. You have been in quite often?
A. Oh, yes.
Q. You couldn't recall whether the Judge told him he would go to jail for life if he pleaded guilty, you couldn't recall whether he said that or not?
A. I suppose the record would show what his —
Q. But you couldn't recall it?
A. No, I can't.
Q. I want to see if I can help you refresh your memory as to when he was taken to Jackson. You took him to Jackson, you remember that?
A. Yes, I took him.
Q. Did you go yourself or another deputy sheriff with you?
A. I believe there was another deputy with me.
Q. If I remember I believe I heard you say you avoided a certain route. You understand you might run into some trouble?
A. I avoided US-12 between here and Jackson.
Q. Is there any way of me refreshing your memory as to whether you took him that same day after the trial or some other day? Can you possibly recall?
MR. SYKES: I believe possibly the records at Jackson or maybe the records of the jail here would show that.
THE COURT: If the witness recalls, he may state, but if he doesn't recall, undoubtedly the records will show.
A. I don't recall.
71 Q. Now, do you recall before Willie Moore came into your custody of a Mr. Chapman asking you to take into the County Jail? Do you recall — you know Mr. Chapman?
A. Very well.

Q. What was his position at that time?

A. He was Chief of Police.

Q. Did he request you to take him into the County Jail, do you recall that?

A. I don't recall of his — he was brought in by the officers from the Police Department and by whose direction I don't know.

Q. What was the usual procedure at that time after a man was arrested, was he taken to the Police Department first, was that the procedure?

A. Usually.

Q. And when was he turned over to you?

A. Well, he was brought over shortly — I would say very shortly after his arrest.

Q. Where did the police officers question him? Did they take him back over to the Police Department or come to the jail to interrogate him?

A. I don't know when they did question him.

Q. You don't know?

A. No, I don't know, with the exception of when he was taken back over there for the arraignment in the lower court and then he was questioned by Chief Chapman.

Q. You don't remember him being questioned at all in your jail?

A. In our jail?

Q. Yes.

A. Oh, yes, I talked with him over there.

Q. The police officers come and talked with him?

A. They may have.

72 Q. You don't remember whether they did or not?

A. No, I don't.

Q. Did they ever come and get him and take him back to the jail as you remember — if you remember?

A. Not as I remember.

MR. ROXBOROUGH: That is all, your Honor.

MR. SYKES: That is all.

THE COURT: That is all, sir, thank you.

(Witness excused).

THE COURT: Is that all the testimony?

(Conference held between Amendment to Motion for new trial Court and counsel).

MR. ROXBOROUGH: At this time, then, if it please the Court, I seek leave to amend my petition to withdraw a

plea of guilty and to move for a new trial to add the additional grounds that the Respondent Willie Moore's plea of guilty was not voluntarily made because of intimidation and coercion by the police and threats of mob violence.

THE COURT: No objection?

MR. SYKES: No objection except I would like to state on the record that my understanding of an original motion filed by Willie Moore was that it included such grounds and that at the first hearing on this matter I was prepared to answer those grounds and it was then my understanding that counsel wished to rest on the holding in the DeMeerleer case primarly and not on those grounds, so that those witnesses were not called. In view of what has taken place, and after reading the record of what has taken place today, I would like to ask that I be given an opportunity to resubpoena some of those witnesses for the purpose of answering this last ground which has been made by Willie Moore's attorney and has been made at this time. I would like to ask that the matter be adjourned for that reason.

73 I do not wish the record to show that there is any undue delay on my part and that it is only for that reason that I would like to have it adjourned long enough for me to ascertain whether it will be necessary for me to produce other witnesses.

THE COURT: All right, an order may be entered granting Mr. Roxborough's motion to permit him to add the additional grounds to his motion for a new trial.

TRANSCRIPT OF PROCEEDINGS DECEMBER 4, 1950

Before: Hon. Lucien F. Sweet, Circuit Judge. Kalamazoo, Michigan. December 4, 1950.

Appearances:

For the People: Mr. William E. Sykes, Assistant Prosecuting Attorney.

For the Respondent: Mr. John W. Roxborough II, Attorney at Law, Tobin Building, 1308 Broadway, Detroit, Michigan.

Mr. C. R. Gemberling, Official Reporter.

O. K. BUDER—

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?
A. O. K. Buder.
Q. What is your occupation?
A. Sheriff, Kalamazoo County.
Q. How long have you been Sheriff of Kalamazoo County?
74 A. Completing the eighth year.
Q. Before that what was your occupation?
A. Deputy Sheriff, then under sheriff.
Q. Were you employed by the Kalamazoo Sheriff's Department in 1938?
A. I was.
Q. Were you employed in October, 1938?
A. I was.
Q. And what were your duties then?
A. Under Sheriff of Kalamazoo County.
Q. In the month of October, 1938, did you have custody of at any time, or were you on duty when Willie B. Moore was in the custody of the Sheriff's Department?
A. I was.
Q. Do you recognize this man here seated at the counsel table beside Mr. Roxborough?
A. I do.
Q. Who is that?
A. Willie Moore.
Q. Is that the Willie Moore that you had in jail at the time you were working there?
A. I take it for granted it is. He has changed some in ten years. He resembles the Willie Moore I knew back ten years ago.
Q. Were you working during the days from October 26 through October 29, 1938, a Wednesday through a Saturday, I believe?
A. Yes.
Q. During that time did you — were you aware of the outside of the jail, the outside of the county building, and whether or not there were any large groups of people or anything like that?

A. Why, I was out in the street and in our main office on the ground floor probably a half dozen times
75 those two days. I never noticed any crowds gathered in front of the County Building.

Q. Did you ever talk with Willie Moore at that time?

A. I don't think I did, no.

Q. Where is your office, or your living quarters now?

A. The sixth floor of the County Building, the top.

Q. The top floor. This building has been here — been used for how long?

A. Thirteen years, I believe; 1937.

Q. It was in this building, was it, that Willie Moore was incarcerated in jail?

A. I am sure it was. Judge Weimer's Court.

Q. The jail here in this county is located up on the top floor of this county building, is that right?

A. That's right.

Q. What are the means of access to that top floor?

A. A private jail elevator.

Q. Is there any stairway that goes up there?

A. Secret and locked.

Q. So that any group of people to get to the jail would have to go to the jail by one of those two means?

A. Jail elevator.

Q. Otherwise, they would have to scale the walls of this building.

A. That's right.

Q. During the time that Willie Moore was in the jail up there, did you know of, or did you personally hear any large crowds of people in the jail or in the Sheriff's office?

A. Crowds of people up in jail?

Q. Yes.

A. No, not October 26 or 27 of 1938, nor was there any crowds in our main office.

76 Q. I think on direct testimony Willie Moore testified two weeks ago that there was some banging upon the cell doors, do you know anything about that?

A. I don't know anything about banging on cell doors.

Q. Would you —

A. It was utterly impossible for anybody to get in and bang on cell doors. They have got to go through too many locked doors to the jail proper.

Q. Have you ever known during the time you have been in the Sheriff's office and that the jail has been on the top floor of this County Building, have you ever known of any large groups of people to get to the jail?

A. Oh, yes, we have church groups come up three times a week through the jail elevator.

Q. Have you known of any large groups to get up to the jail against the wishes of the Sheriff's Department?

A. Absolutely not. The jail elevator is locked.

Q. To your knowledge, nobody has ever gotten to the jail up there against the wishes of the authorities?

A. Not since I have been in this County Building.

Q. You have been here ever since it was opened, haven't you?

A. That's right.

MR. SYKES: That is all. You may inquire.

CROSS EXAMINATION

By Mr. Roxborough:

Q. Sheriff, you were here the last time we had this hearing, and you heard Sheriff Struble testify. Were you present?

A. I was here part of the time, yes, sir.

77 Q. Did you hear him testify to the fact that after Willie Moore was sentenced he took a back road because he had heard of two groups of persons who were threatening or waiting for him?

A. Yes.

Q. Did you hear him give that testimony?

A. Yes.

Q. Did you know anything about that at that time?

A. I had heard about it.

Q. You had heard about it through what source?

A. Hearsay, through other officers.

Q. Did you also hear him testify to the fact that as he left the jail and walked through the streets during the day and during the evening there were groups of persons on the corner talking about the situation?

A. Do I recall Charlie Struble testified to that?

Q. Yes.

A. No, I don't believe I heard that.

Q. As you went out from the jail during that period in the streets did you run across groups of persons talking about this particular situation?

A. No, but naturally heard some talk in restaurants when you would go some place to get a cup of coffee and talk with certain people on the street, naturally you heard the case discussed. Not all of them but some of them would discuss it.

Q. In answer to one of my questions I asked Sheriff Struble if he thought there was any tension in the community and he stated that there was. Now would you say there was any tension in the community at that time?

A. Well, sir, Mr. Counselor, that is a hard question to answer. Probably there was tension. We have tension right now. We have a serious situation that we are
78 facing. We probably have tension right here in the city of Kalamazoo.

Q. Now do you recollect — you said you recall October 26 and 27. Do you recall the 28th and 29th, or were you around at that time?

A. It all depends upon the day of the week.

Q. That was Wednesday, Thursday, Friday and Saturday.

A. If it was on a Sunday, and if I was on days, I might not have been there, but if it was one of the week days, I was here on duty, yes.

Q. Did you have anything to do with taking Willie to Jackson Prison?

A. October 29, 1938, I was along.

Q. You were along?

A. Yes.

Q. You were along when you took that back road, is that right?

A. Yes, sir.

Q. Do you recall — it seems Sheriff Struble couldn't recall how soon after Willie Moore was sentenced you took him to Jackson; do you recall that? Do you recall whether it was the same day or not?

A. All I can do is quote our jail records. October 27, 1938, Willie Moore was brought to the County Jail from the Kalamazoo Police Department. October 29 Willie Moore was transferred from the Kalamazoo County Jail to Southern Michigan Prison at Jackson, Michigan.

Q. You are reciting from your records, as you recall the records, is that right?

A. That is right.

Q. You don't remember having any conversation with Willie Moore?

79 A. I don't believe I talked with Willie. I might have, but I doubt it.

Q. Approximately how many deputy sheriffs would you have on duty at one time, during that period, can you recall that?

A. During the day?

Q. Yes, during the day and the night.

A. Times have changed now, since ten years ago. I couldn't answer that. It would have to be up to Charlie Struble. I don't know the exact number of deputies he had ten years ago.

Q. During this period, as usual, prisoners were allowed to visit — other prisoners?

A. Two days a week.

Q. Two days a week. During that period you didn't hear any visitors make any remarks or bang on any cell doors or anything?

A. No, I didn't personally.

Q. You weren't living upstairs during 1938, were you?

A. No, sir.

MR. ROXBOROUGH: No further questions.

RE-DIRECT EXAMINATION

By Mr. Sykes:

Q. Is it customary at the present time or during the time you have been Sheriff, to remove from your prison as soon as possible anyone convicted of a serious offense?

A. Yes, immediately after sentence we cause a removal, yes.

MR. SYKES: I think that is all.

MR. ROXBOROUGH: Nothing further.

THE COURT: Let me ask a couple of questions just for the purpose of the record.

80 EXAMINATION

By the Court:

Q. Sheriff, as I understand it — correct me if I am wrong—when a prisoner is brought in from the City Jail, he is brought in to the ground floor of this building?

A. That's right.

Q. Through the Sheriff's office or part of the Sheriff's office?

A. That's right.

Q. And he is put on an elevator on the ground floor of this building?

A. Yes, sir.

Q. And where does that elevator go?

A. Well, it starts at the ground floor at the Sheriff's office and it passes Floor Number 1, Floor Number 2, Floor Number 3, Floor Number 4, and comes to a stop on the roof or really the fifth floor, if you wish to include the — what we call the ground floor.

Q. The ground floor.

A. Yes.

Q. Really the second floor is Number 1 on the elevators, isn't that right?

A. That's right.

Q. That is what you meant when you said the sixth floor.

A. Yes.

Q. You meant what is the numbered fifth floor on the elevator?

A. There are six buttons.

Q. One is called "G"?

A. Ground, that's right, your Honor.

Q. Now that elevator, you say it passes those floors, first, second, third and fourth. As a matter of fact,
81 Sheriff, there aren't any doors on the first, third and fourth floors, are there?

A. That's right.

Q. For the elevator.

A. That's right.

Q. If the elevator were to be stopped, there would be no way of getting out on those floors?

A. No, sir.

Q. Is there a way out on the second floor?

A. Yes, the elevator stops on the second floor to bring prisoners into the Circuit Courts.

Q. And where is the court room that was then occupied by Judge Weimer in relation to where that elevator stops on the second floor?

A. The elevator stopped just outside of Judge Weimer's court room door.

Q. That is the so-called attorney's entrance, the side entrance to the court room?

A. Similar to the north door here.

Q. That is just a foot or two, isn't it, from the elevator?

A. That's right.

Q. And then the next stop is the —

A. Third floor, no door. Fourth floor, no door. Then the jail proper.

Q. Then the jail proper. Is that the way Willie Moore was brought into the building when he was brought over from the police station?

A. I don't know.

Q. Is there any other way he could have been brought in?

A. No.

Q. This stairway you spoke about, is that ever used?

A. That is used —

Q. By the public?

82 A. I think there is probably one or two employes of the second floor that go down there occasionally. However, it is constantly locked.

Q. Is it ever used above the second floor?

A. Oh, no.

Q. You would have to have some means of exit — egress and ingress to the top of the building in case the elevator went haywire.

A. It might be used above the second floor if you have a jury room up there — it might be used by one of your court officers.

Q. All these conditions we have been discussing prevailed at the time you have been questioned about when Willie Moore was a prisoner in the jail.

A. Yes.

Q. So I take it that when a prisoner is brought into court, he is not taken outdoors at all, is he?

A. Oh, no.

Q. Would there be any reason for —

A. Put on the elevator at the jail floor and brought down to the Circuit Court Room. The elevator door opens just outside of the Circuit Court room door, and you cannot call the elevator from the second floor; the only stop it makes between ground and jail. There is no button to call it to the second floor.

Q. The only time the elevator ever stops at the second floor is when the person on the elevator —

A. Stops it there.

Q. — stops it there.

A. Yes, sir.

Q. What were you visiting days back there in October, 1938, do you remember?

A. I don't remember that, your Honor.

83 GLENN K. HAMMEL —

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?

A. Glenn K. Hammel.

Q. You live in Kalamazoo?

A. Yes, sir.

Q. What is your occupation?

A. Chief Deputy of the Kalamazoo County Sheriff's Department.

Q. How long have you been employed as such?

A. Since 1935. An absence of five years beginning in 1944 and came back a year ago last August.

Q. So you were employed by the Sheriff Department in 1938?

A. Yes, sir.

Q. And all during the month of October?

A. Yes, sir.

Q. Are you acquainted with the defendant seated here at the table, Willie Moore?

A. I recognize him, yes.

Q. Where have you seen him before?

A. I saw him in the Kalamazoo County Jail in October, 1938, and on previous occasions before that date.

Q. What were your duties in October, 1938, in the Sheriff's Department?

A. Deputy Sheriff.

Q. As such did you have some duty in the jail as such or not?

A. No.

Q. I presume during that time you moved about the community, did you?

A. Yes, sir.

84 Q. And in your moving about the community, were you aware of the talk about Willie Moore or any tension as — well, as pertaining to the offense that Willie Moore was charged with?

A. I wouldn't want to go out on to the tension part. There was some discussion like we have today, about the same. I noticed no difference.

Q. Discussion today about Willie Moore?

A. No, discussion today about the recent case we have had here in Kalamazoo, rape case.

Q. Would you say that — in what respects would you say the discussion is similar between say today and at that time?

A. When you are in the restaurant or meeting a group of people that happen to know you are associated with the department, they will ask you questions, what progress is being made, or like to know more about the case, or you might hear them talking about it in a restaurant the same as we did today.

Q. Did you at any time see any large groups of people about the County Building?

A. At no time.

Q. In that period, October, 1938?

A. No time, never.

Q. Were you in the court room at the time Willie B. Moore was before Judge Weimer?

A. Yes, sir.

Q. And do you recall what happened in the court room that morning?

A. In what way do you mean?

Q. Well, what may have been the proceedings that took place then?

A. Not clear, no. I remember being in the court sitting next to the elevator door in a guard capacity, and

85 I remember Mr. Moore being there and Mr. Zeedyk testifying, but that is about all I remember.

Q. Do you remember anything about the appearance of the court room, whether there were any people there or not?

A. I recall there being a few people in the court room at that time. No crowd. The court room was far from being filled. We were a little surprised in that. In fact, there was no excitement there at all.

Q. There were just a few people?

A. Very few.

Q. You had a chance to observe Willie B. Moore that morning when you brought him down to the court room?

A. Yes, sir.

Q. And at the time he was taken back up to the jail?

A. Yes, sir.

Q. And at the time prior to his leaving to go to Jackson?

A. Yes, sir.

Q. What did you notice, if anything, about his appearance that would have anything to do with the question whether or not he appeared to be in fear or relaxed or what?

A. He was very relaxed. There was no sign of fear and no showing, either physically or by speech.

Q. Anything that would lead you to that conclusion?

A. To not being in fear?

Q. Yes.

A. He was nonchalant. He sat there — he waited for a few minutes in the lobby of the jail waiting for the Sheriff to proceed to take him downstairs. I went downstairs on the elevator with them to the garage. That is the last I saw of him there.

86 Q. Did you at that time do any special guard duty with respect to Willie Moore?

A. No, we had no special guards.

Q. In other words, your work was the usual work as a deputy sheriff?

A. That's right.

MR. SYKES: You may inquire.

CROSS EXAMINATION

By Mr. Roxborough:

Q. Did you go on this trip to Jackson by the side road?

A. No.

Q. Did you know anything about that?
A. Not particular.
Q. Did you hear that there were allegedly two groups of persons waiting?
A. No, I didn't. I don't think I knew anything about that.
Q. You didn't hear anything about that?
A. No.

RAYMOND W. FOX —

DIRECT EXAMINATION

By Mr. Sykes:

Q. What is your name?
A. Raymond W. Fox.
Q. You live in Kalamazoo?
A. I do.
Q. How long have you lived in Kalamazoo?
A. Forty years.
87 Q. What is your occupation?
A. I am one of the Circuit Judges of this Circuit.
Q. Before becoming Circuit Judge what was your occupation?
A. I was Probate Judge.
Q. And preceding that?
A. I was Prosecuting Attorney.
Q. And what was your occupation in 1938?
A. Assistant Prosecuting Attorney.
Q. The County of Kalamazoo?
A. That's right.
Q. Were you working in that capacity as Assistant Prosecuting Attorney in October, 1938?
A. Yes, I was.
Q. Were you working in that capacity at the time of the case in which Willie B. Moore was charged with murder?
A. Yes, I was.
Q. And in your capacity as Assistant Prosecuting Attorney, did you have any conversation with Willie Moore?
A. Do you mean did I myself ask him any questions and he make any answers to me individually or with others?

Q. My question was, whether or not you personally had any conversation with him or — and I was going to ask whether you were present when any conversation was had that you overheard?

A. I have no distinct recollection of my asking him any questions. I may have, but I have no distinct recollection of it. I was present, though, when questions were asked and answers made.

Q. Who was the Prosecuting Attorney at the time?

A. Paul Tedrow.

Q. Where is he now?

88 A. He is at his home. He is ill. He has been ill for a number of years; several years; nearly totally incapacitated.

Q. When you say incapacitated, in what way do you mean?

A. He has great difficulty in walking. He happens to be a neighbor of mine and up until, oh, about a year ago, he used to get out and try to walk the length of the block in front of his house, but he no longer does that. He gets out in the summertime as far as a chair in his yard. It is impossible — it has been for me — to converse with him. He has been unable to answer questions.

Q. He had a stroke, is that true?

A. That's right.

Q. That affected his speech?

A. Yes.

Q. At the time of this offense in October of 1938, I believe you said something about being present when there was some conversation with Willie Moore?

A. That's right.

Q. What was the purpose of the conversation? And the substance generally of it.

A. The purpose of the conversation was the taking of a statement from Willie Moore. If my recollection serves me correctly, and I am quite sure it does, it was in the office of Chief Chapman, in the Chief's own office in the police station, on the northeast corner of the building. My recollection is that Mr. Tedrow asked most of the questions but I may have asked some, but I don't recall, and it may be that Chief Chapman, whom I remember was there — I believe the Sheriff, Sheriff Struble, was there—but I wouldn't swear to that for sure.

89 Q. Was a statement made by Willie Moore — did he make any statement himself?

A. Oh, yes.

Q. And in answer to questions?

A. In answer to questions.

Q. By Tedrow and possibly by others?

A. By Mr. Tedrow. I am sure with Mr. Tedrow there I didn't question him. My recollection — I don't know, I don't recall whether others asked questions — and I may have, but I wouldn't be sure about that.

Q. This statement made by him, was that with regard to the offense of the murder of Mrs. Zeedyk?

A. That's right.

Q. I suppose it would be a conclusion, but was the substance of the statement a confession by him or something to that effect?

A. Yes, he told us he killed her, yes.

MR. ROXBOROUGH: Now, your Honor, I will object to that. The issue of guilt or innocence is not involved. I think that is prejudicial to the accused.

THE COURT: I suppose that any testimony as to the content of the conversation is not material to the issue raised here. I suppose what we are interested in is anything that might indicate whether or not Willie Moore was then under duress or under threats or anything of that nature?

MR. SYKES: My explanation, or my reason, for the question, was to establish that this was not just a conversation about the weather in which — I will ask questions concerning duress and that sort of thing, but I wanted to establish that.

THE COURT: The answer may stand, but it will not, of course, be considered by this Court for the purpose of determining the guilt or innocence of this Respondent, because that is not the purpose of this inquiry. It

90 may stand on the record as showing what the conversation was, the nature of the conversation, so that we can just get the picture of the situation as it then existed. All right.

Q. Would you tell the Court just what you observed from your own personal observation about the appearance of Willie Moore, his manner of speech and anything that

might have some bearing upon the question of the manner in which he made this statement?

A. As I recall it, Chief Chapman had talked to Willie Moore, and my reason for recalling that is at first, without going into detail, unless you want me to, of what I remember, Willie Moore made a — or, I should say this: Told a different set of facts in some details than he finally did and Chief Chapman made some comment to Willie Moore about that he had said he would tell us the truth, and then I don't remember all the details, but my recollection is that at this time that is substantially the way the questions and answers went. I mean, I think Mr. Tedrow asked some questions, and without mentioning the specific point, Willie Moore made certain answers, and then Mr. Chapman spoke to Willie, or reminded Willie Moore, that he agreed — had told him he would tell the whole story, and then he told us a different set of facts in certain particulars about his—my reason for saying that is, I, of course, felt that his answers were fair — were honest and candid in his final statement that he made. That is just my opinion, but he answered the questions that were put to him. To me he seemed very calm and not excited in the least. He spoke about it quite in a matter of fact way. His whole attitude was such that it was hard for me to understand his lack of emotion in telling the story of just what happened or what he claimed happened, what he did and what she did.

91 Q. At the time that you were having this conversation, taking this statement, do you recall whether there were any groups of people around the police station, any evidence of a mob or anything like that?

A. There was no evidence of what I would call a mob, or perhaps I should say this: I don't have any recollection of any people gathering outside of the police station at all. I am sure if they had I would have recalled it. There were people coming and going in the police station as there are to the Municipal Court, and the traffic bureau, and the police department, and to say that I recall people standing in the hall, I cannot recall that, but I have no recollection, and I am sure I would recall it if there were any mob in the hall or any large group of people.

Q. Did you at any other place in the city of Kalamazoo observe any large group or mobs of people?

A. I did not.

Q. During this period of time.
A. I did not.
MR. SYKES: You may inquire.

CROSS EXAMINATION

By Mr. Roxborough:

Q. This conversation you have related took place on the 28th of October?
A. I don't know. I don't know, Mr. Roxborough, what date it was.
Q. Well, if you knew that the complaint was signed on the 28th, would you assume that was the date the conversation was had?
A. I would assume that that day, or not more than the day before, and probably that date, yes.
Q. Willie Moore was picked up on the 26th of October, do you recall that?
92 A. I don't recall that. I don't recall the date, but it was a day or two before.
THE COURT: Before the conversation?
A. Before the conversation. A day before, at least, but whether it was any longer, I don't recall.
Q. To your knowledge, was this the first conversation Mr. Tedrow had with Willie Moore?
A. That I do not recall, Mr. Roxborough, whether that was the first — I don't recall. It is entirely possible that he had talked to him before.
Q. But you don't recall?
A. I don't recall it, no, sir.
Q. Were you working on this case or was Mr. Tedrow working on it?
A. We both were. I went with some of the officers looking for Willie Moore. I have been trying to recall how I knew — knew him when I saw him — but I did. I went with the officers looking for him as soon as the crime was committed, and I was on it from then on, and Mr. Tedrow was likewise.
Q. But there were two days in which you did not see Willie Moore, is that what you are saying, or would you say that?
A. No, I wouldn't say that.

Q. You said you went with the officers to look for him and the next time you saw him again you had a conversation with him on the 28th.

A. Oh, no; I saw him in the police station.

Q. You saw him in the police station?

A. Yes.

Q. You didn't have a conversation with him?

A. Yes, I think he will probably recall my talking to him, and other officers.

Q. Before the 28th?

93 A. Yes, I am quite sure of that. I say before the 28th—at least on the 28th, and I don't know when he was [illegible]ht in.

Q. How many conversations—

A. Oh, that I don't recall.

Q. According to your direct testimony you recall one conversation and you believe it was on the 28th.

A. The Prosecutor directed my attention, I understood, to the time Willie Moore made a statement in which he admitted his guilt. That is where the discussion with the Court arose on your objection. I had talked to him before that time, with Willie Moore.

Q. Do you remember when or what you talked about?

A. We talked about this case, but I can't remember the details of the conversation, no, sir.

Q. Do you remember when you talked to him before this conversation whether he was so-called confessing the crime or whether he was denying it, do you recall that? If you don't recall, just—

A. My recollection is this: The first time he admitted the crime was the conversation that I have related here.

Q. That is the first time he admitted the crime?

A. Yes.

Q. All this time up to the conversation and the conversation, Willie Moore was in the police headquarters is that right?

A. I don't recall seeing him any other place. He may have been confined in the county jail at night, I don't know. I don't know about that. To the best of my knowledge, he was in custody—

Q. Was it customary at that time for the Prosecutor to go to the police department to take a statement?

A. Oh, yes.

Q. Is that still the custom here?

94 A. You would have to ask—

Q. Or over to the Prosecutor's office?

A. I think it is still the—

Q. Take your stenographer over there with you?

A. No, there was a stenographer in the police station.

Q. Police stenographer. Chief Chapman was there all the time as you recall during this conversation, this alleged conversation, on the 28th?

A. Yes, it was in his office.

Q. He was present, is that right? You also made the statement he broke in once when Willie Moore was apparently getting off the facts and reminded him?

A. My recollection is that the Chief made some such comment to Moore, that he promised to tell Mr. Tedrow the truth, or some words to that effect.

Q. Do you recall if he broke in more that once?

A. No, I don't recall that.

Q. You don't recall.

A. He may have, but I don't recall.

Q. But he was there throughout the entire conversation?

A. I am sure of that. It was in his own—in his private office.

Q. Did Willie Moore sign a statement at that time?

A. I have no recollection of his signing any statement, no.

Q. Was one prepared?

A. You mean prepared for his signature?

Q. Yes.

A. I don't know.

Q. There was a stenographer there?

A. There was. My recollection is there was.

Q. You didn't come to court with him when he came to court that Saturday morning?

95 A. I believe I was in the court room, but I do not remember the details about it.

Q. You don't remember any conversation or anything?

A. I don't; truthfully, I don't. We arraigned many men and I don't recall.

Q. At that time do you recall whether it was the procedure of the Court or the Court Reporter not to take the notes for the arraignment?

A. At the arraignment?

Q. Yes.

A. It was the procedure not to take them.

Q. Presently it is the procedure to take them?

A. Very definitely so.

Q. Since when have you inaugurated that procedure?

A. That was inaugurated before I was appointed Circuit Judge in '48.

Q. You don't remember Judge Weimer saying anything to Willie Moore?

A. No, I do not.

Q. But you were present?

A. I wouldn't say that I was in court at the time of the arraignment. I can't recall that I was.

Q. You can't recall.

A. I can't recall that I was in court at the time of the arraignment. Our office is on the same floor, but I don't recall whether I stepped into court. I did not conduct the arraignment, and whether I stepped in there, I don't recall.

Q. Do you know whether Mr. Tedrow and Chief Chapman had conversations with Willie Moore other than when you were present?

A. Do I know? No, I do not know for a fact. That is, I don't recall knowing. It is entirely possible that they did, but I don't know.

96 Q. Mr. Tedrow, you say it is physically impossible for him to testify?

A. Oh, yes.

MR. ROXBOROUGH: No further questions.

MR. SYKES: That is all.

THE COURT: So that there may be no mistake about it, Mr. Tedrow's mental condition is such that he could not testify, is that not right? He isn't able to speak?

A. I don't know that it is his mental condition, but he cannot speak. He cannot answer. I feel sometimes by a smile on his face that he understands what you are trying to say to him, but he can't answer.

THE COURT: Do you remember whether this conversation that you have told us about where Chief Chapman was present and Mr. Tedrow was present was held in the daytime or what time of day? During office hours or—

A. My recollection was that it was in the daytime, but that is just my recollection.

THE COURT: Do you remember anything about the apparent physical condition of Willie Moore at that time?

A. I remember nothing unusual about him.

THE COURT: That is all.

MR. ROXBOROUGH: Nothing further.

MR. SYKES: That is all.

(Witness excused).

MR SYKES: That is all the testimony I have to offer.

MR. ROXBOROUGH: Your Honor, if the Court please, I would like at this time to merely call Willie Moore back to the stand in rebuttal.

THE COURT: All right, sir.

97 WILLIE MOORE—

DIRECT EXAMINATION

By Mr. Roxborough:

Q. You were sworn previously?

A. I was.

Q. You understand you are under oath?

A. I was.

Q. I just want to ask you a few questions. When were you apprehended by the police?

A. Well, I was apprehended at about—might say five minutes to 5:00 on Wednesday, October 26, 1938.

Q. And where were you taken at that time?

A. I was taken direct to the police headquarters.

Q. Did you come in contact at that time with Chief Chapman?

A. Yes, I did, and with a number of other officers.

THE COURT: What was that date?

MR. ROXBOROUGH: 26th of October.

A. October 26.

THE COURT: 26th.

Q. How soon after that did you come in contact with Mr. Tedrow?

A. Well, I believe I talked with Mr. Tedrow on the same evening.

Q. Same evening?

A. Yes, sir.

Q. And did you deny any participation in the crime at that time?

A. Yes, I did.

Q. Did the police talk with you that night?

A. Yes, they did.

Q. How long did they talk to you?

98 A. Well, before I got to the cell it was around about 2:00 or 3:00 o'clock that evening—or that morning, I should say—not that evening.

Q. And when did they talk to you again?

A. Well, they got me up again the next morning about 8:00 o'clock and started again.

Q. How long did they talk to you again that time?

A. All that day, clean up until about, I would say 10:00 or 11:00 o'clock, and then I was brought over to the county jail.

Q. That was on the 27th?

A. That was on the 27th, yes.

Q. Then when did the police talk to you again?

A. They came back up again that next day. That was on a Friday. They talked with me again.

Q. What time did they come before you that morning?

A. Well, I would say around about 8:00 o'clock.

Q. How long did they talk to you that day before you had this conversation with Mr. Tedrow?

A. Well, they talked with me up until noon. Then I was taken to the lockup in the police station and that afternoon I was brought out again and then is when I had the talk with Mr. Tedrow.

Q. Did you sign a statement at that time?

A. No, I never signed a statement.

Q. You say when you were first arrested you denied participation in the crime?

A. I did deny it.

Q. Then on the 28th you admitted participation in the crime, is that right?

A. Yes.

Q. Why did you change the story?

A. Well, it was partly through duress and it was partly through promises on the part of Mr. Tedrow, the Prosecutor, at that time.

99 Q. What, if anything—what did he promise you?

A. Well, he promised me if I would cooperate with the officials that I would get a shorter sentence and that he would see to it that I would get a shorter sentence.

Q. Did Mr. Chapman make any promises to you?

A. Mr. Chapman did.

Q. What did he promise you?

A. He also coincided with Mr. Tedrow.

Q. Did any police officer threaten you during that period?

A. Yes, I was—well, I wouldn't say beat up badly, but I was pushed around in the police station.

Q. During this time from the 26th to the 28th did you have an opportunity to call your parents?

A. At no time did I have an opportunity.

Q. You didn't see your parents at that time?

A. I saw them. They were at the police station, but I wasn't given an opportunity to converse with them.

Q. Did you have an opportunity to converse with, or see, any friends of yours?

A. No, I didn't.

Q. Did you have an opportunity to see or converse with any counsel?

A. No.

Q. Then at the night of the 28th you were taken back to the county jail, is that right?

A. That's right.

Q. Did anything unusual happen that night of the 28th when you were in the county jail?

A. It certainly did. I can't forget it. There was, well, I would say—I don't know how many people was brought up, but there was some people brought up, upstairs on the fifth floor in the county jail. As you know, I was in an isolated cell up there, and the people was brought to that cell to look in on me and at that time when they looked in—I guess they were brought up for the purpose of visiting, but at that time there was someone out there says, "Well, let's get him now, get it over wit" Then is when this hammering started on the door up there.

Q. During this time you were in jail did Sheriff Struble tell you about two groups of people who were allegedly waiting on the highway for you? Did he tell you about that?

A. Well, I remember him—he didn't say direct to me. What Mr. Struble did say, he did tell me it would be best for me to plead guilty to this crime, because he didn't know how long that he could give me proper protection.

Q. You were brought in court then Saturday morning is that right?

A. I was, yes.

Q. You decided at that time to plead guilty?

A. Well, there wasn't very much else for me to do.

Q. When you were arraigned, so-called, did Judge Weimer tell you you had a right to counsel?

A. Judge Weimer didn't tell me anything. He just asked me "What did I plead?"

Q. Then you told him you pleaded guilty?

A. I pleaded guilty, yes.

Q. Then you went in his chambers?

A. Yes, I did.

Q. And when you went to Jackson Prison that afternoon, you took a back road?

A. Yes, we did.

Q. Did you know why you took that back road?

A. Mr. Struble, he told me why we take the back road.

Q. What did he tell you?

101 A. He said there was a group out waiting on the US-12 there, the proper road to Jackson, he says, so he would take a round-about way.

Q. Did you know about that before that Saturday morning?

A. Well, I didn't know. I felt funny. I didn't know about it because I wasn't out.

Q. Did Sheriff Struble or anyone tell you about it, or did you hear the talk and conversation about it?

A. Well, I heard the people out there, that is all I can say. I couldn't hear the conversation because I was locked up.

MR. ROXBOROUGH: You may cross-examine.

CROSS EXAMINATION

By Mr. Sykes:

Q. Do you remember the conversation that Judge Fox, formerly the Prosecuting Attorney, or Assistant Prosecut-

ing Attorney, had with you, or do you remember the conversation at which he was present?

A. Mr. Sykes, Judge Fox, he never interviewed me at any time during that time.

Q. Was he present when—

A. Yes, he was present some of the time, yes.

Q. When Mr. Tedrow and Mr. Chapman were there?

A. He wasn't present on all of the interrogations, no.

Q. But when you made this statement that he was referring to in his testimony, you remember that, do you?

A. When I made the statement to what?

Q. Do you remember making the statement that he testified that you did make?

A. That I had did the crime?

102 Q. Yes, do you remember making that statement?

A. Yes, I made some statement pertaining to that.

Q. You remember Judge Fox being there?

A. Well, I can't say directly that he was there at that time or not, no. There were so many of them there.

Q. Besides Mr. Tedrow and Mr. Chapman there were some other people there then?

A. Yes, there was.

Q. And Judge Fox might have been one of them?

A. Yes, he could have been there.

MR. SYKES: That is all.

MR. ROXBOROUGH: You may step down.

(Witness excused).

MR. ROXBOROUGH: That is all we have to offer, your Honor.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Decision on Motion for New Trial

This matter is now before this Court for decision of Respondent's delayed motion for a new trial.

On the afternoon of October 26, 1938, one Josie Zeedyke, an elderly lady, was murdered in the basement of her home in the City of Kalamazoo. Within a very short time thereafter the Respondent was apprehended and placed in custody and charged with the murder. On October 28, 1938, he was taken before the Municipal Justice Court where he waived examination, and he was then bound over to the Circuit Court. On the morning of October 29, 1938, he was

arraigned in Circuit Court, pleaded guilty, and his plea was accepted. A hearing was had to determine the degree of the crime, which was determined to be murder in the first degree, and he was sentenced to life imprisonment at hard labor. On the afternoon of October 29, 1938, he was removed to Southern Michigan Prison at Jackson.

103 The Respondent is a colored man and at the time of the murder he gave his age as seventeen and informed the Court that he had resided in Kalamazoo for about ten years with his parents, having come here from Arkansas. He had engaged in crime on prior occasions and had been an inmate of the Boys Vocational School at Lansing. Earlier in the same month in which this murder was committed, the Respondent had been arrested for car theft in the City of Grand Rapids and had pleaded guilty in the Superior Court for the City of Grand Rapids, but upon payment of the damage done to the stolen car, sentence was suspended.

It is the contention of the Respondent that he did not receive a fair hearing under the due process clause of the Federal Constitution and that his plea of guilty was not voluntarily made.

In accordance with the practice then prevailing in this Circuit, no record was made of the proceedings had in the Circuit Court at the time of the arraignment and plea. The only indication of what transpired and which is contained in the file, as of the time when this motion was filed, appears in the remarks of the late Honorable George V. Weimer, who accepted the plea and pronounced sentence. However, at a hearing held upon this motion on November 20, 1950, two witnesses who were present in the Circuit Court Room on October 29, 1938, at the time of the arraignment testified as to what then transpired. One of these witnesses is a local attorney who had no connection whatsoever with the case of the People vs. Willie B. Moore, but happened to be in the court room on other business at the time. The other witness is the son of the victim of this murder.

It appears from the testimony of these two witnesses that before the plea of guilty was accepted by Judge

104 Weimer there was considerable discussion in the open court room between the Respondent and Judge

Weimer; that Judge Weimer asked the Respondent whether he had a lawyer and whether he desired to have a lawyer, and that the Respondent gave a negative reply to both of these inquiries, and stated that he wanted to get the matter over with. Each of these witnesses also testified that Judge Weimer informed the defendant that if his plea was accepted, he might be sentenced to prison for life.

After this discussion in open court, which the attorney witness Mr. Schuur testified extended over a period of fifteen minutes, the Respondent was then taken into chambers by Judge Weimer where a private conversation ensued between Judge Weimer and the Respondent. In referring to this conversation in his remarks at the time of sentence, Judge Weimer stated:

"In a private interview with him (the Respondent) in my chambers, he discussed the whole affair very freely with me, and all its revolting details. The examination required by statute has been had; several witnesses examined. The Court has found and determined that Respondent is guilty of murder in the first degree."

"In my private interview with Respondent I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired it. He answered me freely and voluntarily that he is guilty and that his one desire is to have it all over, to get to the institution to which he is to be committed, and to be under observation and to be examined."

At the hearing held on November 20, 1950, Respondent also testified in his own behalf. While this Court has not disregarded the testimony of the Respondent, but on the contrary has carefully considered it, it is the
105 conclusion of this Court that the Respondent's testimony is not worthy of belief. This conclusion is arrived at because of the manner of the witness while testifying, his interest in the outcome of these proceedings, and the many points of conflict between his testimony and the testimony of the two witnesses herein referred to.

It is the conclusion of this Court that the plea of guilty made by the Respondent on October 29, 1938, was freely and voluntarily made, and that the Respondent was fully aware of the nature of the accusation made against him

and the possible consequences of his plea. It is the further conclusion of this Court that before such plea was accepted by the late Judge Weimer, the Respondent was informed of his right to a trial by jury and of his right to be represented by counsel, and that the Respondent indicated his desire to proceed without counsel and without a trial, and his desire to have his plea of guilty received by the Court and sentence imposed without further delay.

At the hearing held on November 20, 1950, Charles Struble, who was sheriff of Kalamazoo County at the time of the Respondent's arrest and arraignment, plea and sentence, also testified. His testimony indicated very convincingly that while tension in the community was rather high due to the commission of this crime and the manner of its commission, there was no threat of mob violence, no congregation of anything that could by any stretch of reasoning be considered a mob or a riotous gathering, and that while the Sheriff felt inclined to take certain precautions and did take certain precautions to avoid any trouble, there was nothing in the situation then existing to indicate that the Respondent had been coerced into
106 a false plea, or that he had been placed in fear of insisting upon his constitutional rights.

It is the conclusion of this Court that the circumstances in this case are not similar to the circumstances which prevailed in the case of *DeMeerleer vs. The People of the State of Michigan*, 329 U. S. 663, and that the determination of this motion cannot rest upon the ruling made by the Supreme Court in that case. While it is true that the Respondent here was seventeen years old at the time of his sentence, it is not true that he was unfamiliar with court proceedings. He was advised by the Court as to his right to counsel. He expressed a desire not to have counsel. He was advised of the consequences of his plea, his plea was understandingly and voluntarily made, and all of his constitutional rights were properly accorded him.

The motion is therefore denied and an order may be entered to this effect.

Lucien F. Sweet,
Circuit Judge.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Order Extending Time for Settling Record—July 14, 1954

* * * * * * * * * * *

Present: Honorable Lucien F. Sweet, Circuit Judge.

In the above entitled cause, the Respondent Willie B. Moore, having moved, by his Attorney William H. Culver, for the extension of time to settle the record herein, and the Court having considered the same, and having
107 considered the Stipulation filed herein entered into by and between the parties,

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the time for settling the record in the above entitled cause be, and the same is hereby extended to September 1, 1954.

LUCIEN F. SWEET,
Circuit Judge.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Order Extending Time for Settling Record—August 25, 1954

* * * * * * * * * * *

Present: Hon. Lucien F. Sweet, Circuit Judge.

In the above entitled cause, the Respondent, Willie B. Moore, having moved, by his Attorney, William H. Culver, for the extension of time to settle the record herein, and the Court having considered the same, and having considered the Stipulation filed herein entered into by and between the parties,

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the time for settling the record in the above entitled cause be, and the same hereby is, extended to November 1, 1954.

LUCIEN F. SWEET,
Circuit Judge.

108 IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Order Extending Time for Settling Record—November 1, 1954

* * * * * * * * * * *

Present: Hon. Lucien F. Sweet, Circuit Judge.

In the above entitled cause, the Respondent, Willie B. Moore, by his Attorney, William H. Culver, having filed

herein his Bill of Exceptions, and the Prosecuting Attorney for said County of Kalamazoo having prayed for an extension of time to settle the records herein, and the Court having considered the same, and having heard the parties by their attorneys in open Court,

IT IS HEREBY ORDERED, ADJUDGED and DECREED, that the time for settling the record in the above entitled cause be, and the same hereby is, extended to November 15, 1954.

LUCIEN F. SWEET,
Circuit Judge.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Reasons and Grounds for Appeal—October 25, 1954

Willie B. Moore, by his Attorney, William H. Culver, claims the following reasons and grounds for appeal:

1. The Trial Court erred in permitting the People to introduce testimony of what transpired at the arraignment of Willie B. Moore, there being no transcript thereof.

2. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because
109 an integral part of the proceedings, to-wit, the transcript of the proceedings on arraignment were not in existence, wherefore Appellant, regardless of his diligence, could not adequately produce a record for hearing of said motion or on appeal.

3. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for New Trial because the evidence shows that the plea of guilty of Respondent-Appellant was not freely and voluntarily made but in fact was made by virtue of duress, coercion and fear.

4. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because the Court originally failed to inform Respondent on October 29, 1938, of his right to counsel, and he did not competently and intelligently waive his said right to counsel.

5. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because the Court on October 29, 1938, failed to appoint counsel for Re-

spondent-Appellant and he did not competently and intelligently waive that right.

6. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because the Court on October 29, 1938 failed to grant and effectively denied Respondent-Appellant his right to a public trial by an impartial jury and he did not competently and intelligently waive that right.

7. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because the Court on October 29, 1938, failed to inform the Respondent-Appellant of the consequences of his plea of guilty.

8. The Trial Court erred in denying Respondent-Appellant's Delayed Motion for a New Trial because
110 the Court on October 29, 1938 deprived the Respondent-Appellant of his right to orderly and due process of law.

WILLIAM H. CULVER,
Attorney for Respondent-Appellant.
Business Address:
710 Kalamazoo Bldg.,
Kalamazoo, Michigan.

Dated: October 25, 1954.

IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Claim of Appeal—July 12, 1954

The Appellant and Respondent, Willie B. Moore, hereby claims an appeal from an Order of the Circuit Court for the County of Kalamazoo, Michigan, entered on the 31st day of May, 1951, denying Appellant and Respondent's delayed motion for a new trial in the above entitled cause.

Appellant and Respondent takes a general appeal thereon.

Dated at Kalamazoo, Michigan, this 12th day of July, 1954.

WILLIAM H. CULVER,
Attorney for Appellant and Respondent.
Business Address:
710 Kalamazoo Bldg.,
Kalamazoo, Michigan.

111 IN THE CIRCUIT COURT OF KALAMAZOO COUNTY

Date of Order Allowing Appeal July 6, 1954

Certificate to Bill of Exceptions—November 15, 1954

I, LUCIEN F. SWEET, Circuit Judge for the County of Kalamazoo, Michigan, hereby certify that the foregoing Bill of Exceptions was duly settled by me on the 15th day of November, 1954, within the time specified in the Order of this said Court extending the time to settle said Bill to November 15, 1954, and that the same constitutes the testimony, proceedings, opinions and findings of the Court necessary to present the questions raised by the errors assigned as reasons and grounds for appeal, and such other matter as by rule or Statute may be required to be set forth herewith; and that where I have deemed it necessary to a full understanding of the questions involved, the testimony has been set out in full or in part by question and answer.

I further certify that the reasons and grounds for appeal were annexed to said Bill of Exceptions at the time the same was certified by me.

LUCIEN F. SWEET,
Circuit Judge.

Dated: November 15th, 1954.

* * * * * * * * * * *

112 IN THE SUPREME COURT OF MICHIGAN

46250

THE PEOPLE OF THE STATE OF MICHIGAN, *Plaintiff*,

vs.

WILLIE B. MOORE, *Defendant*.

Appeal from Kalamazoo.

Thomas M. Kavanagh, Edmund E. Shepherd, John Vikkaart,

William H. Culver.

Date	Proceedings
1953	
Aug. 15	Application for leave to appeal filed.

1954

July 2—Application granted.
Nov. 27—Record on appeal filed.
Dec. 4—Note of argument filed.

1955

Jan. 12—Stricken-no briefs.
Mar. 4—Note of argument filed.
Apr. 12—Continued.
May 6—Note of argument filed.
June 16—Argued and submitted.
Dec. 1—Affirmed.
Dec. 19—Record returned to Court below.

1956

Jan. 9—Motion for rehearing submitted.
Mar. 1—Motion for rehearing denied.

113 IN THE SUPREME COURT OF MICHIGAN

Order Granting Leave to Appeal—July 2, 1954

In this cause an application is filed by defendant for leave to appeal from the sentence of the Circuit Court for the County of Kalamazoo and the order denying defendant's motion for a new trial, and nothing in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby granted.

* * * * * * * * * * *

114 IN THE SUPREME COURT OF MICHIGAN

Argument and Submission—June 16, 1955

This cause coming on to be heard, is argued by Mr. Dalm for plaintiff and Mr. Culver for defendant and is duly submitted.

* * * * * * * * * * *

115 IN THE SUPREME COURT OF MICHIGAN

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff and Appellee,

v.

WILLIE B. MOORE,
Respondent and Appellant.

Dissenting Opinion—Filed Dec. 1, 1955

BEFORE THE ENTIRE BENCH.

SHARPE, J.

Defendant, Willie B. Moore, upon his plea of guilty to an information charging the crime of murder, was sentenced to life imprisonment. The record shows that on the afternoon of October 26, 1938, Josie Zeedyke was murdered in Kalamazoo, Michigan. Defendant was arrested in the late afternoon of the same day. He was questioned by numerous public officials on the night of his arrest until approximately 2:00 or 3:00 o'clock in the morning of the following day. On October 27, 1938, he was questioned from approximately 8:00 o'clock a.m. until 10:00 or 11:00 o'clock p.m. On October 28, 1938, he was again subject to questioning from approximately 8:00 o'clock a.m. until about noon, and again questioned in the afternoon when he confessed to the crime charged. He was then taken before the municipal justice court where he waived examination and was bound over to the circuit court for trial.
116 On October 29, 1938, defendant was arraigned, pleaded guilty, and was sentenced to Southern Michigan Prison at Jackson for life.

No record was made of the proceedings in the circuit court at the time of the arraignment and plea, but evidence was taken to determine the degree of murder. During the day of arraignment the circuit judge directed that defendant be taken to the judge's private chambers, and upon their return to the court room the judge stated:

"* * * In a private interview with him (the respondent) in my chambers he discussed the whole affair very freely with me in all its revolting details. The examination required by statute has been had; several witnesses examined. The court has found and deter-

mined that respondent is guilty of murder in the first degree.

"In my private interview with respondent I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired it. He assured me freely and voluntarily that he is guilty and that his one desire is to have it all over, to get to the institution to which he is to be committed, and to be under observation and to be examined."

On May 26, 1950, defendant filed a motion for a new trial for the following reasons:

"1. Because the verdict is contrary to the law, whereas said Respondent was deprived of rights essential to a fair trial.

"2. Because at no time was assistance of counsel offered or mentioned to Respondent.

"3. Because said Respondent was not informed of the consequences of his plea of guilty.

"4. Because said Respondent was *hurried* through unfamiliar legal proceedings with not a word being said in his defense or cross examination of the state's witnesses.

"5. Because said Respondent, being of the age of seventeen years at the time of said trial and possessed of only a seventh grade education, was not otherwise aware of his Constitutional rights."

117 A hearing was held on the above motion, testimony taken tending to show high tension in the city, threats of plots to do defendant bodily harm, and that he was taken over a back road to prison.

Charles Struble, who was sheriff of Kalamazoo county in 1938, testified:

"In talking with Willie Moore—that was before he had made any statement—I told him that if he was guilty of it he might better own up on it because I says there could be trouble. Tension is very high outside and there could be trouble. If you are not guilty of it, why then, I says, I would stand pat forever after.

Then I told—I spoke to him about what would be required of him and I would have to take him to the Municipal Court for his arraignment in the lower court and then back over there, and I told him he would be entitled to a hearing in lower court and I says, 'There you will have the Judge read to you and you can waive or demand an examination. You are entitled to an examination over there. It is my duty, and it is up to me, to protect you, to use every effort at my command to protect you, but,' I says, 'the tension is high out there and I am just telling you what could happen if it was started by someone.' I don't know the language I used.

"* * *

"I don't know as I come out and said at any time for him to plead one way or the other, but what I was putting over to him was the fact that if you are guilty and will be sent away you might better be getting away before trouble, because I had had information there was certain colored fellows, a group of them, that was going to interfere with me, and also that there was a bunch of Holland fellows going to meet me when I go to Jackson, they would meet me there at Galesburg there, and, therefore, when he was sentenced I avoided the main route and went way through by Gull Lake and across over in the hills there."

The record also shows that defendant is a colored man. He was seventeen years of age at the time of his sentence, had a seventh grade education, and was without assistance of counsel at the time he pleaded guilty. Prior to this time he pleaded guilty to the theft of an automobile. It
118 is also a fact that the trial judge is deceased and that no official records were kept of the arraignment.

The trial court denied defendant's motion for a new trial, and in doing so stated:

"It is the conclusion of this Court that the plea of guilty made by the Respondent on October 29, 1938, was freely and voluntarily made, and that the Respondent was fully aware of the nature of the accusation made against him and the possible consequences of his

plea. It is the further conclusion of this Court that before such plea was accepted by the late Judge Weimer, the Respondent was informed of his right to a trial by jury and of his right to be represented by counsel, and that the Respondent indicated his desire to proceed without counsel and without a trial, and (that it was) his desire to have his plea of guilty received by the Court and sentence imposed without further delay.

"At the hearing held on November 20, 1950, Charles Struble, who was sheriff of Kalamazoo County at the time of the Respondent's arrest and arraignment, plea and sentence, also testified. His testimony indicated very convincingly that while tension in the community was rather high due to the commission of this crime and the manner of its commission, there was no threat of mob violence, no congregation of anything that could by any stretch of reasoning be considered a mob or a riotous gathering, and that while the Sheriff felt inclined to take certain precautions and did take certain precautions to avoid any trouble, there was nothing in the situation then existing to indicate that the Respondent had been coerced into a false plea, or that he had been placed in fear of insisting upon his constitutional rights.

"It is the conclusion of this Court that the circumstances in this case are not similar to the circumstances which prevailed in the case of DeMeerleer vs. The People of the State of Michigan, 329 U.S. 663, and that the determination of this motion cannot rest upon the ruling made by the Supreme Court in that case. While it is true that the Respondent here was seventeen years old at the time of his sentence, it is not true that he was unfamiliar with court proceedings. He was advised by the Court as to his right to counsel. He expressed a desire not to have counsel. He was advised of the consequences of his plea, his plea was understandingly and voluntarily made, and all of his constitutional rights were properly accorded him.

"The motion is therefore denied and an order may be entered to this effect."

119 The principal issue upon this appeal is whether defendant was accorded due process of law within the meaning of the constitution of the United States. Due process is the guarantee of rights essential to a fair hearing under the Federal Constitution. See DeMeerleer v. State of Michigan, 329 U.S. 663 (67 S. Ct. 596, 91 L. ed. 584). In the above case it was held that the defendant was deprived of rights essential to a fair hearing. In the DeMeerleer case defendant was seventeen years of age, confronted with a serious criminal charge, hurried through unfamiliar legal proceedings without assistance of counsel, and not apprised of the consequences of his plea.

In the case at bar defendant was seventeen years of age, of limited education, questioned for hours as to the extent of his participation in the crime, and did not have counsel, friends or relatives to advise him of the consequences of a plea of guilty. Moreover, there was high tension in the community and threats of violence directed at defendant.

The facts in this case are readily distinguishable from the facts in People v. Coates, 337 Mich. 56. In that case defendant was twenty-five years of age and experienced in crime. In People v. Quicksall, 322 Mich. 351 defendant was forty-four years of age and of fairly keen intellect with experience in court procedure. Under the facts and circumstances in this case, we are of the opinion that due process of law was not accorded defendant.

The judgment of conviction is reversed and a new trial ordered.

Signed: Edward M. Sharpe
Talbot Smith
Leland W. Carr.

119 IN THE SUPREME COURT OF MICHIGAN

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff and Appellee,

v.

WILLIE B. MOORE,
Defendant and Appellant.

Majority Opinion

BEFORE THE ENTIRE BENCH.
BOYLES, J.

I am unable to concur in reversal and in the granting of a new trial. As I see it, the only real similarity between this case and the DeMeerleer Case* is that in both cases the defendants were 17 years of age and pleas of guilty without attorney were received.

After this defendant had pleaded guilty, the judge had a conference with the defendant** to ascertain whether the plea of guilty was made freely and voluntarily without undue influence, coercion, promises or threats. Thereafter the judge, in open court, announced that the plea of guilty would be accepted, and proceeded to take testimony to determine the degree of murder. A record of those proceedings in open court was made and transcribed, and is in the printed record here. Four witnesses were sworn and their testimony, which is in the record, seems to establish beyond a reasonable doubt that the defendant was guilty of first degree murder with which he was charged. The statements of the sentencing judge made in open court, on accepting the plea, and imposing sentence, are also in the record.

It may be conceded that we are not now concerned with the question whether or not this defendant is guilty
120 of murder. However, it is worthy of note that nowhere in these entire proceedings in the trial court, or here, has the defendant ever claimed that he was not guilty. He still does not deny his guilt by having committed what appears to have been a most heinous, revolting, sadistic murder and mutilation of an elderly woman.

While it is not of controlling importance now, in considering here whether the defendant's constitutional rights

* 313 Mich 548 (329 US 663).

** CL 1948, § 768.35 (Stat Ann 1954 Rev § 28.1058).

have been invaded, the court should not ignore the difficulties in obtaining proof of the commission of this crime after the lapse of 17 years, and also the possible consequences of returning to society a person likely to increase the public burden of preventing sex crimes. The record here before us made at the time of the defendant's arraignment and sentence includes the following statement made by the sentencing judge in open court at the time of defendant's arraignment and plea, in referring to the murdered woman, and the admissions of the defendant. The court said, in part:

> "When she then reached the basement he [the defendant] exhibited the knife he had in his pocket and commanded her to remove her clothing; that she did; that he then raped her and then when she was about to leave the basement she made the remark 'You will pay for this'; that he realized that she recognized him, knew him as having been there before, and that then he struck her 1 severe blow on the head with the furnace shaker; that that 'knocked her out'; she fell to the floor. He then cut her throat and then stabbed her in the abdomen and, to use his words, 'her guts then came out' and he left. Such is his story to me in private, told very calmly; without any compulsion whatever. He insists that there is something wrong with his head; that he has had something akin to queer sensations before this.
>
> "This, without question, is the most pronounced case of sadism in the criminal annals of this county."

The record here further shows that in May, 1950, the sentencing court held a hearing on a petition of the
121 defendant seeking a new trial, obviously relying on the DeMeerleer Case, *supra*. The defendant was represented there in court by counsel. The trial court made a transcript of that proceeding, and it is here in our record, filed by the defendant. The court took the testimony of 8 witnesses, all of whom were cross-examined at length by the defendant's counsel. The defendant himself also was sworn and testified briefly, disputing categorically the record made by the sentencing court at the time of his arraignment. In compliance with the law in this State, the sen-

tencing judge had interviewed the defendant in his chambers before receiving his plea of guilty, to assure the court that the plea was voluntary and not coerced, before accepting it. The record here shows that the trial court, before accepting the defendant's plea of guilty, stated on the record and in open court:

> "In my private interview with respondent I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired it. He assured me freely and voluntarily that he is guilty and that his 1 desire is to have it all over, to get to the institution to which he is to be committed, and to be under observation and to be examined."

The record here further shows that the defendant had been in trouble 4 or 5 times before committing this murder, consisting of breaking and entering and unlawful taking of automobiles, had been committed to the State boys' vocational school for delinquent boys, and that he was later arrested again for stealing an automobile.

Contrary to the DeMeerleer Case, this defendant was not arrested, brought into court, arraigned, and sentenced all in the same day. He had 4 days during which he might ask for an attorney, or for an opportunity to confer
122 with friends or relatives. He makes no claim that at any time he made any such request. To the contrary his insistence with the trial court that he was guilty, wanted to plead guilty and get it over with, negatives the idea that he wanted to confer with counsel or with friends. While he was questioned at length during those 4 days, he falls short of showing that he was threatened or promised leniency. The record here would not support such a claim.

In the Quicksall Case, on certiorari to the United States supreme court from this Court,* Mr. Justice Frankfurter, delivering the opinion of that court, said of Quicksall, the petitioner, on his motion to vacate sentence and for a new trial:

> "He claims that he was deprived of his right to counsel to the extent that the due process clause of the

* 339 US 660.

Fourteenth Amendment secures that right. The generalizations that are relevant to such a claim no longer call for elaboration. They have been set forth in a series of recent opinions [citing them]. * * * There is no evidence that at the time of his plea petitioner requested counsel or that appointed counsel was offered him.* * *

"Almost 10 years after his sentence, on April 18, 1947, the petitioner asked the circuit court for Kalamazoo county to vacate it and to grant him a new trial. He claimed the sentence had a constitutional infirmity in that he did not have the assistance of counsel and was prevented from communicating with counsel of his choice while he was hospitalized. * * *

"The trial judge took no stock in the reconstructing memory of the petitioner and denied his motion. The Supreme Court of Michigan affirmed. 322 Mich. 351, 33 NW2d 904. We brought the case here out of a zealous regard for due observance of the safeguards of the Fourteenth Amendment in the enforcement of a State's penal code. 336 U.S. 916. The record exacts the holding that the petitioner has failed to sustain the burden of proving such a disregard of fundamental fairness in the imposition of punishment by the State as alone would justify this court to invalidate the sentence by reason of the due process clause.

"* * * Since the Michigan courts disbelieved petitioner's allegations that he had not been allowed to communicate with his family, his friends or a lawyer, and no request was made by him for legal aid, the only question is whether, in the circumstances of
123 this case, the failure of the record to show that he was offered counsel offends the due process clause.

"* * * In the light of what emerged in this proceeding upon a scrutiny of what took place before the same judge 10 years earlier, when petitioner's plea of guilty was tendered and accepted, it would stultify the due process clause to find that any right of the petitioner was infringed, by the sentence which he incurred. *Foster* v. *Illinois*, [332 U.S. 134], *supra* at 138; *Bute* v. *Illinois*, 333 U.S. 640, 670-74."

The Quicksall Case is directly in point and controlling here. This Court should enter an order affirming the denial of the defendant's petition in the trial court to vacate sentence and for a new trial.

BUTZEL, REID, DETHMERS, and KELLY, *JJ.*, concurred with BOYLES, *J.*

Signed: EMERSON R. BOYLES
NEIL E. REID
HARRY F. KELLY
JOHN R. DETHMERS
HENRY M. BUTZEL.

Endorsed: Filed Dec. 1, 1956
HUGH H. CARPENTER
Clerk Supreme Court.

124 IN THE SUPREME COURT OF MICHIGAN

* * * * * * * * * *

THE PEOPLE OF THE STATE OF MICHIGAN, *Plaintiff*,

vs.

WILLIE B. MOORE, Defendant.

No. 46250

Judgment—December 5, 1955

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Kalamazoo, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court, there is NO ERROR, Therefore it is ordered and adjudged that the judgment of said Circuit Court, for the County of Kalamazoo be and the same is hereby in all things affirmed.

* * * * * * * * * *

125 IN THE SUPREME COURT OF MICHIGAN

* * * * * * * * * * *

Order Denying Motion for Rehearing—March 1, 1956

A motion for rehearing having been heretofore submitted herein, It is hereby denied.

* * * * * * * * * * *

126 Clerk's Certificate to foregoing Transcript omitted in printing.

128 SUPREME COURT OF THE UNITED STATES

No. 29 Misc., October Term, 1956

* * * * * * * * * * *

Order Allowing Certiorari—November 13, 1956

ON PETITION FOR WRIT OF CERTIORARI TO the Supreme Court of the State of Michigan.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 569 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

November 13, 1956

Office - Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 42

WILLIE B. MOORE,

Petitioner,

vs.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITIONER'S BRIEF

WILLIAM H. CULVER,
403 Kalamazoo Bldg.,
Kalamazoo, Michigan.

Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 42

WILLIE B. MOORE,

Petitioner,

vs.

STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITIONER'S BRIEF

A. Official Report of Opinions Delivered in the Courts Below:

People v. *Moore*: 344 Mich. 137; 73 N.W. 2d 274.

OPINION OF LUCIEN F. SWEET, CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO, MICHIGAN, 9TH JUDICIAL CIRCUIT

Transcript of Record
Pages 81-84.

B. Grounds on Which the Jurisdiction of This Court Is Based

1. The final decree of the Supreme Court of Michigan, 344 Mich. 137; 73 N.W. 2d 274, was entered on December 1, 1955.

2. The order of the Supreme Court of the State of Michigan denying a Motion for Rehearing was entered on the first day of March, 1956.

3. Jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Sec. 1257, which provides in part:

> "Final judgments . . . rendered by the highest Court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> 1. . . .
>
> 2. . . .
>
> 3. By Writ of Certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under, the United States. June 25, 1948 c. 656, 62 Stat. 929"

4. Jurisdiction was assumed by this Court by Order allowing Writ of Certiorari, November 13, 1956.

C. Constitutional Provisions and Statutes Involved

Article XIV, Section 1, Constitution of the United States, which is involved in all 8 questions, provides:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

Questions One (1) and Two (2) also involve Section 64, Act 314, of the Public Acts of 1915, State of Michigan, M.S.A. 27.1044:

> "If the truth of the case be fairly stated in such exceptions, it shall be the duty of the judge holding such

court to sign such statement, and he may be compelled to do so by the court to which any writ of error may by law be brought, upon the judgment rendered in such cause, or which shall have authority to decide on such exceptions when returned by him. And in case of the death, resignation, expiration of the term of office, or vacancy in office from any other cause, of the judge before whom the cause was tried, when there shall be an official stenographer of such court who has taken full minutes of the testimony, exceptions and charges of the judge at such trial, such minutes shall be prima facie evidence of the testimony given, exceptions taken, and the charge of the court, and other proceedings on such trial, and such exceptions may be settled and signed by the successor in office of such judge, or by any judge authorized in such cases to perform the general duties of the judge of such court."

Question Three (3) also involves Section 12 of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.872:

"A police officer who has arrested a person without a warrant must, without unnecessary delay, take the person arrested before the most convenient magistrate of the county in which the crime was committed."

Question Four (4) also involves:

a. Section 1, Chapter III, of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.854:

"On the trial of every indictment or criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself."

b. Michigan Court Rules, State of Michigan, Rule 35 A, Sec. 1:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the court shall advise the accused that he is entitled . . . to have counsel."

Question Five (5) also involves:

a. Section 16, Chapter XV, of Act 175 of the Public Acts of 1927, State of Michigan, M.S.A. 28.1253, which provides:

> "Whenever any person charged with having committed a felony or misdemeanor shall be unable to procure counsel and the presiding judge shall appoint some attorney to conduct the defense, the attorney shall . . ."

b. Michigan Court Rules, State of Michigan, Rule 35 A, Sec. 1:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the court shall advise the accused . . . that in case he is financially unable, if accused so desires, the court will, if accused so requests, appoint counsel for him."

The Sections of the Constitution of the State of Michigan (1908) involved are as follows:

a. Article II, Section 16,

> "No person shall . . . be deprived of life, liberty or property, without due process of law."

b. Article II, Section 19,

> "In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury . . .; to have the assistance of counsel for his

defense; and in courts of record, when the trial court shall order, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal."

D. Questions Presented for Review

1. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Sec. 1 of the Constitution of the United States, in denying the Delayed Motion for New Trial of respondent in the Circuit Court for the County of Kalamazoo, Michigan, and affirming that denial in the Supreme Court of the State of Michigan, when the trial judge who accepted the plea of guilty originally, was deceased at the time of such hearing and there was no complete record, and no record kept of the arraignment?

2. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the Constitution of the United States in denying the Delayed Motion for New Trial of respondent in the Circuit Court for the County of Kalamazoo, Michigan, in affirming that denial in the Supreme Court of the State of Michigan, when the only evidence of an arraignment was the testimony of witnesses as to their recollection of the arraignment, such testimony having been taken 12 years later?

3. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the Constitution of the United States, in that the plea of guilty of respondent to the crime of murder, in the Circuit Court for the County of Kalamazoo, Michigan, was not freely and voluntarily made, but in fact was made by virtue of duress, coercion and fear?

4. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1, of the

Constitution of the United States in that the trial court in the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of respondent, failed to inform respondent of his right to counsel and respondent did not competently and intelligently waive said right?

5. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of the respondent; failed to appoint counsel for said respondent and the respondent did not competently and intelligently waive said right?

6. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the time of the alleged arraignment and sentence of the respondent, failed to inform respondent of his right to trial by jury, failed to grant him said right, and in sentencing him, effectively denied him his right to a public trial by an impartial jury, and he did not competently or intelligently waive the same?

7. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the trial court, that is, the Circuit Court for the County of Kalamazoo, Michigan, at the alleged arraignment and sentence of the respondent, failed to inform the said respondent of the consequences of his plea of guilty and the said respondent was not of sufficient intelligence and understanding to comprehend the consequences thereof.

8. Did the State of Michigan deny Willie B. Moore due process of law contrary to Article XIV, Section 1 of the Constitution of the United States, in that the said Willie B. Moore was denied a combination of two or more of the aforesaid rights and, considering the background and experience of the aforesaid respondent, he was unable to competently and intelligently waive said rights?

E. Concise Statement of the Case

(Figures in parentheses refer to pages of printed record unless context clearly indicates otherwise.)

On the afternoon of October 26, 1938, Josie Zeedyke was murdered in Kalamazoo, Michigan (6-16, 81).

Respondent was arrested in the late afternoon of the same day (15, 40, 77, 81). He was questioned by numerous individuals including the Sheriff, Chief of Police, Prosecutor and Assistant Prosecutor for the City and County of Kalamazoo, Michigan, on into the night of the 26th and until approximately 2:00 o'clock A.M. on the 27th (52, 53, 57, 69-81). He was questioned from 8:00 o'clock A.M. to 10:00 or 11:00 o'clock P.M. on the 27th (78). He was again questioned from 8:00 o'clock A.M. to about noon on the 28th, and again was questioned on the afternoon of the 28th, whereupon he confessed and was taken before the Municipal Justice (78). He waived examination and was bound over on the 28th day of October, 1938 (41, 42, 81).

The Respondent testified that during the time of questioning the Prosecutor told him that if he cooperated he would get a shorter sentence (79). Respondent testified the Chief of Police of the City of Kalamazoo so informed him (79).

Testimony by the Respondent and by various officers of the Sheriff's department and the Prosecuting Attorney's

staff shows that there was high tension in the community (52-56, 61, 62, 72). Mr. Moore was informed of this tension, had access to the papers of the community, and was even warned by the Sheriff that perhaps he (the Sheriff) could not do anything to protect him (40-41, 48, 52-57, 79, 80). These newspapers were shown to Respondent (49). Threats of a plot were told to him (53, 79, 80). The Respondent was told that he was to be taken over a back road to prison, which was done (53, 56, 80).

Respondent testified that someone banged on the bars of his cell and there were remarks and threats which were audible to him in his cell from persons outside his cell, followed by hammering (48, 79). It was further testified that police officials threatened him (45, 79). People were brought to the cell to look in upon him (79). Respondent was pushed around in the Police Station (79). The cell was isolated (48).

On October 29, 1938, the Information was filed, Respondent was arraigned, pleaded guilty and was sentenced to Jackson Prison for life (4, 5, 6, 16, 17). Respondent states that he arrived in the court room at 7:00 o'clock in the morning of the 29th (42, 44, 45).

The Information, which was read to him on the 29th day of October, 1938, had endorsed upon it forty-three (43) witnesses (4, 5). There is no evidence that the Respondent was furnished with a copy of the Information (1). No record was made of the arraignment and plea (28-32). The sentencing judge remarked that he had had a private interview with the Respondent, that he assured Respondent that he should not plead guilty unless he was guilty, that he was not required to plead guilty, that he could have a trial by jury if he wished it (15). According to the statement of the trial judge, Respondent stated that he was guilty and wanted to get it over with, to get to an institution to be

examined, and to be under observation (16). The trial judge stated that Respondent insisted that there was something wrong with his head and that he had had queer sensations before (16). Further testimony by several witnesses indicates an unnatural calmness or nonchalance on the part of Respondent (68, 71, 72). One witness stated it was hard to understand his attitude (72).

On two separate hearings, November 20, 1950, and December 4, 1950, several witnesses were called by the prosecution to testify to their recollection of what had occurred in the court room that morning twelve years before (26-29, 32-35, 35-39). One witness was a casual observer, and the other was a son of the murdered lady (26, 35).

The testimony of the first witness, a casual observer, Reint Schuur, consisted in evidence that the Information was read, prosecutor asked Respondent how he pleaded, Respondent pleaded guilty (26-28, 32-35). Testimony further showed that according to this witness the judge told Respondent he could get a life sentence (33). According to the witness, Mr. Moore said he realized that (33). Witness further testified that something was said about a lawyer, Respondent stating he did not want one, he wanted to get it over with (33). Witness further stated he did not remember any mention of trial by jury (34).

John Zeedyk, son of the murdered lady, testified (35-39). It was he who was physically restrained from committing an assault upon Willie B. Moore back in 1938 after Mr. Moore had been arrested (49). This witness testified that Respondent was asked if he wished a lawyer (36). Respondent answered "no" (36, 37). He also testified that the judge informed Respondent he could be sentenced to life in prison and that the judge asked whether the confession was voluntary (38). He also remembered nothing about the trial by jury being mentioned (38).

The testimony of the Respondent indicates that the trial judge did not tell him that he had a right to counsel (80); that the consequences of his plea were not explained to him (41); that his plea was not voluntary (40, 45, 78, 79, 80); that no mention was made of jury trial (45); that the judge informed himself of the amount of schooling that the Respondent had (45); that Respondent just wanted to get out of this mess.

Willie B. Moore is a colored man and was seventeen (17) years of age at the time of his sentence (14, 18, 20, 45, 82). He had a seventh grade education (18). He was without the assistance of counsel for his defense, was without the aid or assistance of friends or relatives, during the entire period referred to above (32-39, 40-49, 55). The aid of friends and relatives and the counsel of an attorney was not afforded nor offered to him (40, 41, 47, 55, 79).

The sole criminal record of the Respondent was certain juvenile activities, which never have been specifically stated, and a conviction upon a plea of guilty for car theft (14, 15, 21-24, 82). In reference to the car theft, Detective Walter Coe testified to the fact that the Respondent had pleaded guilty in Grand Rapids (21-24). Respondent's father was the person with whom the detective dealt (21-24, 42-46). It was the impression of the Respondent that the action against him in Grand Rapids had been dismissed (42-43). The testimony indicated that the Respondent did not know that he had a right to get an attorney in the Grand Rapids matter (41); that Detective Coe did not tell him that he had the right to an attorney (41).

The Respondent did not know of his right to counsel (47). The Respondent did not know that murder carried life (49).

F. Summary of Argument

In the argument reference is made to the Original Record and the Supplemental Record. Original and Supplemental Records are defined as follows:

"Original Record." The proceedings and records of the Municipal Court and the Circuit Court, including returns from Municipal Court, complaint, warrant, information, order sentencing, as well as testimony determining sentence, as indicated by the file before the trial court on the making of the Delayed Motion for New Trial.

The "Supplemented Record." The Original Record plus the record of the three hearings on Respondent's Delayed Motion for New Trial.

There are certain facts and principles which are common to all of the issues considered. Rather than to repeat them each time, they are hereby called to the attention of the Court:

When Willie B. Moore was arraigned and sentenced, he was seventeen (17) years of age. He was a colored man and had been born in Arkansas, a member of a large family. He had a sixth grade education. His criminal experience was limited to certain juvenile acts which have not been shown and which have been but generally and vaguely referred to. His record consisted of a conviction in Grand Rapids, Michigan, for car theft. The testimony of a Grand Rapids officer, Walter Coe, does not indicate that this previous conviction in any way educated the Respondent as to his constitutional rights. In fact, the Respondent had thought the charge had been dismissed. The Grand Rapids police had dealt with the Respondent primarily through one of his parents.

It is important to note that the sentencing Court quotes Respondent as saying: " * * * there is something wrong with my head" " * * * that he had had something akin to queer sensations before this." The sentencing court indicated that the Respondent said he wanted to go to an institution and be under observation and be examined (Transcript of record, 15, 16).

Respondent was without the aid of counsel from the time he was arrested on a Wednesday afternoon until the time he was sentenced on the following Saturday morning. He was examined often by many people for long hours. He was without the advice and assistance of friends or relatives.

In *Powell* v. *Alabama,* 287 U.S. 45; 53 S.Ct. 55; 77 L.Ed. 158; the Defendants were young, ignorant, illiterate and were without the benefit of friends or counsel. Such a background had this Respondent, and the United States Supreme Court held that such a background must be considered in reference to due process.

Of a similar background is *DeMeerleer* v. *Michigan,* 329 U.S. 663; 67 S.Ct. 596; 91 L.Ed. 584; where Rene DeMeerleer was young, inexperienced, and was hurried through unfamiliar court proceedings, and the United States Supreme Court reversed the trial court.

In *Fikes* v. *State of Alabama,* —— U.S. ——; 77 S.Ct. 281; —— L.Ed. ——; the Respondent was an uneducated negro, of low mentality, who was afforded more consideration by the Alabama authorities than Willie B. Moore was by Michigan authorities. The Court held that the education, mentality, and experience of the youth were important factors in determining whether due process was granted.

In *Herman* v. *Claudy,* 349 U.S. 904; —— S.Ct. ——, —— L.Ed. ——; Respondent pleaded guilty to numerous

charges and filed habeas corpus, some eight years later. This Honorable Court considered the youth and inexperience of Stephen J. Herman, the possible mental coercion, the failure to appoint counsel and reversed and remanded the cause.

The Michigan Supreme Court has not failed to recognize the duty of a trial court to be extremely chary in protecting the constitutional rights of young, illiterate persons standing before them.

In *People* v. *Utter,* 209 Mich. 214, at pages 223 and 224, 176 N.W. 424, the court considered the limited intelligence of the Respondent and his ignorance of legal proceedings and granted a new trial. In *People* v. *Merhige,* 212 Mich. 601, 180 N.W. 418 this court reversed the judgment and sentence in the case of a Syrian man twenty-seven (27) years of age.

See the dissenting opinion of Mr. Justice Bushnell, *People* v. *Crandall,* 270 Mich. 124, at 130; 258 N.W. 224.

See also *People* v. *Coates,* 337 Mich. 56; 59 N.W. 2d 83, at 93; where, although the appeal was denied, this Honorable Court said: "We are not aware of any unusual circumstances which indicated a duty on the part of the court to appoint counsel for Defendant." In that particular Defendant was twenty-five (25) years of age, experienced in crime, waived examination before the examining magistrate, and expressed a desire to plead guilty and get it over with. See also the dissenting opinion of Mr. Justice Bushnell.

See also *People* v. *Mahler,* 329 Mich. 155; 45 N.W. 2d 14, where, although the court held that the record leaves no doubt that the Defendant's plea of guilty was freely, voluntarily and understandingly entered, it notes that he was at that time twenty-seven (27) years of age, had served in the Armed Forces, and there was nothing to indicate that his mentality and understanding were other than normal.

See also A.L.R. 2d 1074.

This crime aroused a community. The facts and nature thereof indicate that the matter called for careful examination. The possible sentence was one of life. Nothing appears herein to indicate that the trial court applied that cool, careful deliberation and serious consideration for this young colored man which was called for.

Although the apparent guilt or innocence of the Respondent should not be considered by the Court, the Respondent steadfastly denies responsibility for the crime. As Mr. Justice Frankfurter pointed out in his dissenting opinion in *Sacher* v. *United States*, 343 U.S. 128; 73 S.Ct. 451, 464; 96 L.Ed. 717:

> "Time out of mind this Court has reversed convictions for the most heinous offenses, even though no doubt about the guilt of the Defendant was entertained. It reversed because the mode by which guilt was established, disregarded those standards of procedure which are so precious and so important to our society."

1. In this cause no record was kept by a court reporter of the arraignment and plea.

Without a record of the arraignment it is impossible for the Respondent to have an impartial review of his cause, to determine whether due process was ever granted to him.

2. The only evidence of the arraignment is a reference that states: "(Respondent arraigned and pleaded guilty)." To remedy that defect the People were permitted to introduce the testimony of witnesses as to their recollection of the arraignment, such testimony being taken 12 years after said arraignment. Such testimony should not have been admitted to establish that Respondent's constitutional rights were granted to him.

3. The plea of guilty was not freely and voluntarily but was made because of the threats made to Respondent, the banging on the bars of the cell, the long and intensive questioning by many officials, the statements by the Sheriff that perhaps he had better plead since he was not certain he could protect Respondent, the statements concerning plots to waylay the Sheriff and the aggregation of other facts heretofore and hereafter set out.

4. The trial court erred in that it failed to inform Respondent of his right to counsel and he did not competently and intelligently waive his said right.

5. There is some evidence in the Supplemented Record that something was said about a lawyer. It is contended that the youth and inexperience of Respondent coupled with the many circumstances which caused him to plead demanded that he be informed very carefully and clearly of his right to counsel and that without counsel he could not be accorded his Constitutional Rights.

6. As indicated in Paragraph 4, counsel should have been appointed for the Respondent. His limited intelligence, youth and inexperience indicate that, under the circumstances he did not intelligently and competently waive that right.

7. The record shows that the trial court erred in failing to inform Respondent, prior to arraignment and plea, of his right to a trial by jury, and, in sentencing him effectively denied him his right to a public trial by an impartial jury and he did not competently and intelligently waive same.

8. The Original Record fails to show that Respondent was informed of or understood the consequences of his plea. In fact it shows that the Respondent had something wrong with his head and wanted to get to an institution for exam-

ination. The Original Record and the Supplemented Record show that Respondent was no experienced criminal who understood the criminal law and who could understand the consequences of "life."

9. Though each error above noted or each fact separately considered may not of itself constitute a deprivation of due process, there are at least twenty-four facts or factors which considered in the aggregate prove that due process was not granted to the Respondent.

G. ARGUMENT

1. The Respondent Is Entitled to a New Trial in This Case. The Trial Judge Is Deceased and the Record and Testimony on Arraignment Is Missing, All Without Fault of the Respondent. There Is No Evidence of an Arraignment and There Can Be No Means for Respondent to Adequately Appeal.

The trial judge, George V. Weimer, was deceased on the filing of the delayed motion for new trial. No stenographic record was kept of the arraignment.

The Statutes of the State of Michigan, being Section 64, Act 314 of the Public Acts of 1915, M.S.A. 27.1044, provide that in case of the death of the trial judge, the successor in office may certify the Bill of Exceptions. This certification is conditioned upon the existence of an official stenographer who has taken full minutes of the testimony, exceptions and charges of the judge.

The Respondent should not be permitted to take advantage of the death of the judge when he could, by timely action, have had a proper certification. However, the Respondent was not able to effect the proper papers and proceedings for a new trial until 1950. The delay should not weigh against the Respondent.

The failure to have a record on arraignment was not the fault of the Respondent. Such failure prejudiced his rights on filing his Delayed Motion and also on appeal. Such failure deprives Respondent of a complete record.

Counsel has failed to find a case where there were no stenographic notes taken at all. However, loss of stenographic notes, death of the stenographer with later inability to transcribe, and other cases in which a record or a part of the record of the trial was not available to the moving party, are similar situations.

In *White Pine Lumber Company* v. *Manufacturers Lumber Company,* 191 Mich. 390; 158 N.W. 124, a certified transcript of the evidence taken in shorthand was used to prepare the Record on Appeal, though the stenographer had died after the trial. In that case another stenographer was able to transcribe the record. It is apparent that if no one could have transcribed the notes, defendant would have been entitled to a new trial.

If the power exists in the Appellate Court to grant a new trial for inability to perfect the record in civil cases then it should exist in criminal cases.

In *Little* v. *The State,* 131 Texas Criminal 164; 97 S.W. 2d 479, the offense was murder, the punishment death. The Supreme Court of Texas ruled that the inability to obtain a transcript due to the death of the reporter was sufficient basis to reverse the judgment against Respondent and remand the case to the lower court. See *City of Duncan* v. *Abrams,* 171 Okla. 619; 43 P. 2d 720.

Although this Honorable Court has often said that the right of appeal is not essential to due process of law under Article XIV, Section 1, of the Constitution of the United States, *Reetz* v. *Michigan,* 23 S.Ct. 390; 188 U.S. 508; 47 L.Ed. 563, it has also determined that the right is not

essential to due process provided due process has already been accorded in the tribunal of first instance. *State of Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 50 S.Ct. 228; 281 U.S. 74; 74 L.Ed. 710 and the cases cited therein.

The absence of a record on arraignment and plea has completely denied and deprived the Circuit Court, the Supreme Court of Michigan and this Honorable Court of any means of determining whether due process was or was not afforded Respondent in the Court of first instance. In the absence of that opportunity to determine whether due process was afforded and, in the light of the factual background of this case, the youth, illiteracy, inexperience, and immaturity of Respondent, the threats and tension displayed, it cannot be presumed that due process was granted to the Respondent.

A Respondent should be given a right of cool review of his conviction by a purely judicial tribunal, far enough removed from the scene of the trial to be uninfluenced by local prejudice. 13 A.L.R. 99 at page 107. This is true whether the Respondent is tried by a jury or a judge or pleads guilty. In the present case feeling was high at the time of the plea. Now at this late date the local court cannot be entirely free of the influence and feeling of the community. Even in 1955 when the Michigan Supreme Court decided this case the court could not restrain itself from quoting the original judge's remarks: "This, without question, is the most pronounced case of sadism in the criminal annals of this country."

Article II, Section 19 of the Constitution of the State of Michigan provides that reasonable assistance shall be given to prosecute an appeal. Yet in this case there can be no adequate appeal and therefore there can be no cool review of Respondent's conviction.

2. Testimony of Witnesses as to Their Recollection of the Arraignment of the Respondent, Such Testimony Being Taken Twelve Years After the Said Arraignment, Is Not Admissible.

The Original Record was the only proper record to be considered by the trial court in hearing Respondent's Delayed Motion for a new trial.

The Circuit Court for the County of Kalamazoo, Michigan, permitted the People of the State of Michigan to substitute a make-shift record for the original record on arraignment, which original record had never existed due to an omission by that tribunal at the time of Respondent's plea.

The majority of the Supreme Court of Michigan, in this cause completely overlooked the omission of the trial court and considered the substituted testimony.

The benefits of a record and the evils that arise by introducing evidence *aliunde* are evident. Satisfactory secondary evidence may be introduced to supply evidence of original documents and proceedings which are lost. But secondary evidence substituted for a non-existent record based upon the memory of witnesses of an occurrence twelve years old. should not be allowed. Such evidence could not be properly admitted to prove what statements had been made and what things had been done on the arraignment of the Respondent.

If this evidence is not competent, the Michigan Supreme Court will not presume that all necessary steps have been taken. See *Simon Grigg* v. *The People*, 31 Mich. 471, where the case was silent as to whether an arraignment was had or a plea made.

See *Edwards* v. *The People*, 39 Mich. 760, where the Court held that an absence from the record of a recital of

an investigation by the judge in that case avoided a sentence on plea of guilty.

See also *People* v. *Walter Lepper*, 51 Mich. 196, 16 N.W. 377, where the Court said it would have been more satisfactory if the record furnished more of the particulars of the investigation made by the Circuit Judge before pronouncing sentence. Unlike the case in question, the Court therein held that there appeared to be no undue haste in the matter.

3. The Plea of Guilty of the Respondent Was Not Freely and Voluntarily Made, But in Fact Was Made by Virtue of Duress, Coercion and Fear.

It needs no citation of authority that a coerced plea accepted by the Court, with sentence thereon, deprives the individual of due process of law.

Art. II, Sec. 16 of the Constitution of the State of Michigan (1908), provides:

> "that no person shall * * * be deprived of life, liberty, or property, without due process of law."

The Constitution of the United States, Art. XIV, Sec. 1, provides:

> "Nor shall any state deprive any person of life, liberty, or property without due process of law."

According to the Original Record the Respondent was arrested without warrant on October 26, 1938, a Wednesday afternoon. Thereafter he was without aid of counsel and there is no evidence that counsel was offered to him. He was taken before an examining magistrate on the 28th day of October, 1938 in the afternoon. There is no indication why there was such a prolonged delay between the arrest and the hearing before the magistrate.

The Statutes of the State of Michigan, Sec. 12 of Act 175 of the Public Acts, 1927, M.S.A. 28.872, provide:

> "A peace officer who has arrested a person without a warrant must, without unnecessary delay, take the person arrested before the most convenient magistrate of the county in which the crime was committed."

The trial court in sentencing the Respondent states that an investigation was made. This order is conclusive that an investigation was made. However, the Supreme Court of Michigan itself has held that acceptance of plea and sentence thereupon will be avoided if enough appears in the record to convince the court that the Respondent was a man of limited intelligence, ignorant of legal proceedings and that proper care was not accorded. *People* v. *Utter, supra; People* v. *Merhige, supra.*

Considering then the Original Record alone, there can be no presumption that the plea of guilty was freely and voluntarily made. On the contrary, the record shows the delay in the hearing, the background of the Respondent, the nature and acts of the Respondent upon which a voluntary plea cannot be predicated.

If this Honorable Court consider the Supplemented Record, it appears all the more clearly that the plea was not freely and voluntarily made.

It is not denied that questioning began immediately upon the arrest of Respondent. Nor is it denied that he was subjected to continuous questioning until early in the morning of the following day and was further questioned at great length the second day and again the day after that, until finally he confessed. (Transcript of Record, 52, 53, 57, 69-81.) During this prolonged questioning he was without counsel. (Transcript of Record, 32-39, nowhere in Transcript does counsel appear at the time of sentence.)

Respondent did not contact, and was not permitted to contact, his parents or relatives during the period of questioning from October 26, 1938, until just before he was sent to prison on the 29th after everything was over. (Transcript of Record, 55, 79, 40, 47.) At the time of his arraignment and sentence he was afforded no opportunity and did not in fact contact his family or relatives although he requested that they be contacted. He was finally permitted to see his folks for about one half hour after he was sentenced. (Transcript of Record, 47.) His very failure to demand counsel and demand that his folks be contacted and that he be permitted to talk with them indicates his fear and inexperience.

The Respondent was kept in solitary confinement during the time of his retention in jail. (Transcript of Record, 48.) People banged on the bars of his cell. (Transcript of Record, 79.) The then Sheriff admitted telling Respondent that tension was very high, saying it was his duty to protect the Respondent, but stating that he could not do so perhaps if trouble started. (Transcript of Record, 40-41, 48, 52-57, 79, 80.) He was told he would get a shorter sentence if he cooperated. (Transcript of Record, 79.) Respondent had access to and was shown the local papers which were aroused by the crime. He was told that there was a plot to get him. (Transcript of Record, 53, 56, 79, 80.)

The testimony indicates that Respondent was not only questioned for long hours but was questioned by many different men and officers, including the Sheriff, Chief of Police, Prosecutor, Assistant Prosecutor, members of sheriff's department and others. (Transcript of Record, 52-56, 61, 62, 72.) He was questioned till late in the evening of the day of arrest and on into the early morning of the next day. He was questioned all the next day until late at night. He was questioned all the morning of the third day. Belatedly he was brought before an examining magis-

trate. (Transcript of Record, 78.) Yet the record nowhere discloses that any special care was given to this boy nor does the record disclose that any rights were accorded the boy or that they were carefully explained to him or that he intelligently and comprehendingly waived them.

A factor which should not be forgotten is the fact that this was a horrible crime that shocked a community and although extreme care and caution should have been exercised to bring the guilty person to task, there arose a reciprocal duty to be very wary of wronging an innocent person. It is submitted that this reciprocal duty was not exercised.

In *McNabb et al.* v. *United States*, 318 U.S. 332, 63 S.Ct. 608; 87 L.Ed. 819, the Respondent was held to have been deprived of due process when he was questioned for several days without being permitted to contact his relatives; without the aid of an attorney, and without being brought before an examining magistrate as soon as possible. Failure to accord Respondent an expeditious hearing violated the due process clause of the Fifth Amendment of the Constitution, according to this Honorable Court.

Although the *McNabb* case and the cases which follow it concern the Fifth Amendment, the same or similar basic rights are sought to be protected under the Fourteenth Amendment. These principles were applied in *Fikes* v. *Alabama*, —— U.S. ——, 77 S.Ct. 281, —— L.Ed. ——. In that case an uneducated negro of low mentality was taken to prison for questioning on a capital charge. He was questioned from Sunday until Thursday and then confessed and was then questioned again. Taking into consideration the youth and mentality of the Respondent along with the long questioning and other facts similar to our present case, this Honorable Court held that confessions so obtained and used violated the right of Fikes to due process.

under the Fourteenth Amendment of the Constitution of the United States and reversed the conviction and remanded the case to the lower court.

Under the circumstances of the present case, to wit: arrest without warrant, promises of leniency, low mentality of the Respondent, banging on the bars, statements of plots, fears of the Sheriff told to Respondent that he could not protect him, and all other facts the plea of guilty was not freely and voluntarily made, but in fact was made by virtue of duress, coercion and fear.

As Willie B. Moore said (transcript of record, p. 44):

> "After the man tell me he couldn't protect me than there wasn't nothing I could do. I was mostly scared than anything else."

4. Court Erred in That It Failed to Inform the Respondent of His Right to Counsel and Respondent Did Not Competently and Intelligently Waive His Said Right.

Article II, Section 19, of the Constitution of the State of Michigan (1908) provides:

> "In every criminal prosecution the accused shall have the right . . . to have the assistance of counsel for his defense."

Section 1, Chapter III of Act 175 of the Public Acts, 1927, M.S.A. 28.854 provides:

> "On the trial of every indictment or criminal accusation, the party accused shall be allowed to be heard by counsel and may defend himself."

Michigan Court Rules of the State of Michigan, Rule 35 A, Section 1, provides:

> "If the accused is not represented by counsel upon arraignment, before he is required to plead, the Court

shall advise the accused that he is entitled . . . to have counsel."

Rule 35 A was adopted June 4, 1947. It was not in existence at the time of the sentence of this Respondent. Yet this rule merely recognized the existing constitutional rights of the Respondent, whether written or not. *DeMeerleer* v. *Michigan, supra.* There could have been no intelligent and competent waiver thereof.

"To justify acceptance of a plea without counsel, there must not only be an offer of the constitutional rights by the Court, but there must also be a waiver thereof, understandingly made."

Uveges v. *Pennsylvania*, 335 U.S. 427; 69 S.Ct. 184, 93 L.Ed. 127.

The Original Record is void of any reference to counsel. There was no offer. There could be no waiver. If the offer is presumed, the facts negative a presumption of competent waiver.

The Supplemented Record presents evidence which is at the most, insufficient to satisfy a man's constitutional guarantee. Witness Schuur said (transcript of record, 33):

"I don't know whether the judge asked him if he had a lawyer, or whether he wanted a lawyer, but there was some conversation about a lawyer."

Mr. Zeedyk, whom the Court must remember was the son of the deceased person, said (transcript of record, 38):

"All I know is that he did not have counsel, nor did he desire counsel."

This conclusion of the witness is the testimony of a man who was only restrained with great effort by others from

attacking the Respondent. The desire, although honest, to see Respondent punished, could not help but prejudice this witness, who assumed the Respondent was guilty of the crime. Such prejudice could not help but color his testimony.

The testimony of Detective Walter Coe, a Grand Rapids police officer, is the only testimony as to Respondent's criminal experience. It failed to indicate that this boy's experience informed him of his right to counsel. Any negotiations in reference to the car theft sentence in Grand Rapids were carried on between either the father or mother of the Respondent and Mr. Coe. The record indicated that Mr. Coe himself was mistaken about the person with whom he dealt. (Transcript of Record, 21-26.)

In *Commonwealth of Pennsylvania, ex rel. Stephen J. Herman, Petitioner* v. *Dr. John W. Claudy, Warden,* 350 U.S. 116; 76 S.Ct. 223; the defendant was twenty-one years of age when charged with thirty offenses and he pleaded guilty without benefit of counsel. This occurred in a state court. Petitioner's experience was somewhat similar to that of Willie B. Moore's. He had previously pleaded guilty to a charge of burglary, larceny and forgery, and was sentenced to six to twelve months in jail, again without benefit of counsel. Was held incommunicado for three days. He said he was guilty and said "I throw myself upon the mercy of the court." 350 U.S. at 121; 76 S.Ct. at 226.

This Honorable Court reversed the judgment and remanded the case.

In addition to the facts pointed out above, Willie B. Moore stated that there was something wrong with his head and that he had had queer sensations before (transcript of record, p. 16). He told the judge he wanted to get to an institution to be examined and be under observation

(transcript of record, p. 15). There was evidence of an unnatural calmness or nonchalance about the Respondent (transcript of record, pp. 68, 72).

The crime charged was serious. The charge was complicated. No information was furnished Respondent. The facts do not show a tender of the right to counsel and the facts do not show an intelligent, competent waiver thereof.

5. The Trial Court Failed to Appoint Counsel for Respondent, and He Did Not Competently or Intelligently Waive Said Right.

Section 16, Chapter XV of Act 175 of the Public Acts 1927, M.S.A. 28.1253 provides:

> "Whenever any person charged with having committed a felony or misdemeanor shall be unable to procure counsel, and the presiding judge shall appoint some attorney to conduct the defense, the attorney shall . . ."

The Court Rules of the State of Michigan, Rule 35 A, Section 1, provides:

> "If the accused is not represented by counsel upon arraignment before he is required to plead, the Court shall advise the accused . . . that in case he is financially unable, if accused so desires, the Court will, if accused so requests, appoint counsel for him."

The Original Record fails to indicate any notice to Respondent that he was entitled to have counsel appointed for him, although the probable sentence was life imprisonment if the plea was accepted.

The Supplemented Record refers to the matter of a lawyer as indicated in paragraph 4 hereof. Mere reference to counsel, if any, was meaningless. No offer of coun-

sel was made. The Respondent did not understand that counsel could be appointed for him if he so requested.

In *Uveges* v. *Pennsylvania, supra,* a youth seventeen years of age pleaded guilty to four indictments for burglary. That case arose under the Fourteenth Amendment. This Honorable Court held that counsel should have been appointed. The Court was divided as to when counsel should be offered, some members believing counsel should be furnished where serious offenses are charged, others believing that in non-capital cases, each case depends on its facts. Consider if you will, the facts enumerated by the court: 335 U.S. at Page 441; 69 S.Ct. 186 " . . . age and education of defendant, conduct of the court or the prosecuting attorney, and the complicated nature of the offense charged and the possible defense thereto . . . "

See also *Palko* v. *Connecticut,* 302 U.S. 319; 58 S.Ct. 149; 82 L.Ed. 288.

In the case of Willie B. Moore, the crime was serious. There were many facts besides the youth, inexperience and lack of education of the boy which necessitated appointment of counsel. It may be said that the charge was simple: "Murder." However, a mere glance at Michigan Criminal Law and Procedure, Second Edition, Glenn C. Gillespie, pages 1969 through 2001 shows 31 pages dealing with murder in particular and from pages 2039 through 2055, some 16 pages on defenses. Probably there is nothing in criminal law more complicated than murder and its defense.

In *Johnson* v. *Zerbst,* 304 U.S. 458; 58 S.Ct. 1019; 82 L.Ed. 1461, this Honorable Court has expressed the following thought:

> "It (the Sixth Amendment) embodies the realistic recognition of the obvious truth that the average defendant does not have sufficient professional legal skill to

protect himself when brought before a tribunal with power to take his life or liberty."

304 U.S. at 462;
58 S.Ct. at 1022;
82 L.Ed. at 1461.

Murder is no less complicated and counsel is no less needed under the Fourteenth Amendment.

If this Honorable Court shall hold that the right is presumed to have been offered, such a right was not waived. Respondent was uneducated, illiterate, ignorant of the intricacies of law, and totally unaware of the fundamental elements of fair trial guaranteed by the Constitution.

Johnson v. *Zerbst, supra;* although a case decided under the Sixth Amendment is similar to the case at bar. In that case the Court pointed out that the Petitioners were of little education and without funds. They had neither friends, relatives nor acquaintances to aid them. The Court says:

"Courts indulge every reasonable presumption against waiver of rights; . . . We do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

The *Johnson* v. *Zerbst* case is a reflection of a trend in the law which is recognized in Michigan cases and the Michigan Court Rules, *supra.* See 3 A.L.R. 2d 1074, which cites *In Re Elliott,* 315 Mich. 662; 24 N.W. 2d 528; and

People v. *Quicksall*, 322 Mich. 351; 33 N.W. 2d 904; both of which, although ruling there was a competent waiver therein, imply that such waiver therein, should be limited to adults of at least ordinary intelligence and experience.

In view of the above, there can be no doubt that failure to provide Respondent with counsel constituted an unlawful abridgement of his constitutional rights vitiating his conviction and resultant sentence.

6. The Trial Court Erred in Failing to Inform the Respondent of His Right to a Trial by Jury, and in Sentencing Him the Court Effectively Denied Him His Right to a Public Trial by an Impartial Jury, and He Did Not Competently or Intelligently Waive the Same.

Article II, Section 19, of the Constitution of the State of Michigan (1908) states:

> "In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury."

The Constitution of the United States, Article IV, Section 1, provides:

> "No state shall deprive any person of life, liberty or property without due process of law."

It needs no citation of law that due process includes the right to a trial by a jury.

The Original Record indicates an offer of a trial by jury in the statement of the judge in determining degree. However, there is no evidence of a competent waiver thereof.

Nothing in the supplemented record shows that trial by jury was offered by the judge. Nothing in the entire case

indicates Respondent was able to comprehend the significance of such an offer. Alone, caught up in this complicated mess, with threats of violence in his ears and in a court room occupied by hostile people, it is questionable whether an offer of a trial by jury would have any meaning.

7. The Trial Judge Failed to Inform the Respondent of the Consequences of His Plea of Guilty, and the Respondent Was Not Sufficiently Intelligent and Experienced to Understand the Consequences at the Time of His Plea.

Article II, Section 19 of the Constitution of the State of Michigan (1908) *supra*, and the Fourteenth Amendment to the Constitution of the United States, *supra*, both provide for due process, *supra*.

Due process includes the right to be advised of the consequences of a plea of guilty and correlative therewith the person shall be able to understand the consequences thereof. *DeMeerleer* v. *Michigan*, *supra*.

The Original Record indicates the youth and inexperience of the Respondent. The record further indicates that the Respondent insisted there was something wrong with his head and that he had queer sensations before this. His one desire was to have it all over, to get to an institution to which he was to be committed, and under observation and to be examined.

The Original Record fails to show the consequences of the plea were told to the Respondent. He was charged with a serious charge, couched in complicated language, with no counsel and without having the benefit of the Information or the witnesses endorsed thereon.

It should not be presumed that the consequences were told to him. If such is presumed, it cannot be presumed

that he understood them and therefore pleaded with full knowledge thereof under the facts set out.

Although the Supplemented Record indicates that at the time of the hearings in 1950, the Respondent had an understanding of the consequences of his plea and had materially matured, there is nothing in the records to show that at the time of the sentencing the Respondent knew what the consequences were. That he was inexperienced and a confused individual was indicated by the fact that he thought that the action against him in Grand Rapids had been dismissed. Further he stated that he wanted to get to the institution to which he was being committed and be examined. This leads one to the conclusion that he, if he had an opinion as to where he was to go, thought it would be to some mental institution, for he had stated he had queer sensations in his head. Both witnesses, Schuur and Zeedyk, testified that the life sentence was mentioned. Notwithstanding casual reference thereto, the immaturity and inexperience of Respondent and other facts heretofore set out do not indicate an ability to comprehend the consequences.

8. The Trial Court Deprived Respondent of His Right to Orderly, Due Process of Law.

Though this Honorable Court may find from considering the aforesaid questions individually that no single fact or factor constitutes a denial of due process, yet a consideration of the "totality of the circumstances" does show such a denial.

What facts and factors constitute the *People* v. *Moore*? (Pages refer to transcript.)

a. The horrible nature of crime (5-16).

b. The seriousness of crime.

c. The youth of Respondent (14).

d. The lack of education of the Respondent (14).

e. The lack of experience of Respondent (14, 15, 21-24, 82).

f. The long hours of intensive questioning by numerous officers (52, 53, 57, 69-81).

g. The lack of counsel (32-39, 40-49, 55 plus entire record).

h. The incarceration in isolated cell (48).

i. The pounding on cell doors, threats, shouting (48, 79).

j. The failure to inform Respondent of his right to counsel (32-39, 40-49, 55).

k. The notice to Respondent that threats had been made, plots laid, and tension in community (48, 52-56, 61, 62, 72).

l. The statements by sheriff that he was not certain he could protect Respondent (52-57, 79, 80).

m. The absence of opportunity to talk with Father or Mother, and denial of Respondent's request (40-49, 55).

n. The statements of mental condition and desire to be sent to an institution for examination (15, 16).

o. The complexity of offense charged with complex defenses available.

p. The lack of adequate record for appeal (6, 29-42).

q. The determination of vital constitutional issues by relying on the aged memory of spectators (26-29, 32-35, 35-39).

r. The failure to inform Respondent of his right to trial by jury (45).

s. The failure to inform Respondent of the consequences of his plea (41).

t. The immediate examination after confession and then hasty arraignment, plea and sentence (78, 4, 5, 6, 16, 17).

u. The failure to furnish information with 43 witnesses (5).

v. The unnatural calmness of Respondent (68, 71, 72).

w. The promise of a lighter sentence in case of a plea ( ).

x. Threats and roughness by police officials (79).

It is prayed that the aforesaid list of facts and factors, which list undoubtedly is not complete, will be considered as an integrated factual background upon which to rest the Court's decision. Naturally no case of this type is on all fours with any other. Mr. Moore reminds us somewhat of Mr. Fikes, somewhat of Mr. DeMeerleer, somewhat of Mr. Gibbs, somewhat of Mr. Uveges; et al.

We contend that the lower courts have refused to decide the matter on the total factual background.

The Circuit Court for the County of Kalamazoo in denying Respondent's motion for a new trial (transcript of record, 81-87), completely ignored the inability of Respondent to obtain a complete record. The testimony of the witnesses some twelve years later was accepted without comment. The court found that a lawyer was mentioned and that the consequences of the plea were told to Respondent. He found that the plea was voluntary. He wrote off completely every word that Respondent said (transcript of record,

p. 83). He considered, specifically, at the most, five of the minimum of twenty-four facts and factors involved.

That court further appears to have limited its decision to the issues raised in the *DeMeerleer* case (transcript of record, p. 84). However, the issues were not so restricted. See the motions filed and amendments thereof (transcript of record, pp. 28-32, 39, 57-58).

In the majority opinion, 344 Michigan 137; 73 N.W. 2d 274 (see p. 95 of transcript of record), the Michigan Supreme Court first discusses at length the fact that Willie B. Moore never denied his guilt and that the record serves to establish that he was guilty.

If it were important, a reading of the record, as for example, pages 41, 46, 78 and 79 would establish that Willie B. Moore denied the crime. However, that question is not at issue here as is conceded by the Supreme Court of the State of Michigan.

Next the majority says it should not ignore the difficulty of "obtaining proof of the commission of the crime after the lapse of 17 years." In *Palmer* v. *Ashe, Warden;* 342 U.S. 134; 72 S.Ct. 191; 96 L.Ed. 154, this Honorable Court permitted a petitioner under habeas corpus to have his day in court though it was some 18 years after petitioner pleaded guilty.

Also considered in the majority opinion is the "possible consequences of returning to society a person likely to increase the public burden of sex crimes" (transcript of record, p. 96). The majority itself thinks there is something mentally wrong with Willie B. Moore. It is our hope that he can be returned to the lower court where he will be protected and society will be, also.

The majority opinion then raises a question: Did that court consider anything other than the *DeMeerleer* case, *supra,* as applied to some of the facts in this case?

The original hearing was based upon a petition of Willie B. Moore which does not appear in the record. In the proceedings of May 16, 1950 (transcript of record, pp. 19-20), the scope of the hearing was limited to the issues of the *DeMeerleer* case (transcript of record, p. 20). However, on May 26, 1950, a new petition was filed expanding the issues to be considered to a full consideration of the constitutional rights involved (transcript of record, pp. 17-18). These issues and the issues of lack of record and improper testimony were raised and expanded in the subsequent hearings (transcript of record, pp. 28-32, 39, 57-58). A mere consideration of issues raised by the case (*DeMeerleer*) would not be a fair basis for determination of this case.

The majority lends much weight to the fact that the defendant had been in trouble four or five times (transcript of record, p. 97). All the offenses were juvenile except the sentence in Grand Rapids for stealing an automobile. The evidence shows that this did not give Willie B. Moore the experience of a Quicksall. In *Gibbs* v. *Burke,* 337 U.S. 773; 69 S.Ct. 1247; a transcript of the petitioner's criminal record showed eight convictions, and nine acquittals, discharges and no true bills. Yet the Court reversed and remanded.

Finally the majority says that this case is not like the *DeMeerleer* case except as to the ages of the Respondents, but that the *Quicksall* case is directly in point (transcript of record, pp. 97-99). The similarities between the *DeMeerleer* case and this case do not end at the youth of the Respondents. Willie B. Moore was faced by a serious and complicated charge. Not a word was said in his defense and once a confession had been forced from him he was

hurried through unfamiliar legal proceedings. At no time was the assertance of counsel mentioned more than casually, and counsel was not offered. Merely because a man is held incommunicado, for the better part of four days before being hurried through the proceedings does not rob the case of the element of quick justice. Yet, in this case, once the intense questioning was over the Respondent was rushed through unfamiliar proceedings without counsel, without the aid of relatives and friends and under the dire threat of the plots against him, and under fear for his life.

As to the *Quicksall* case, Mr. Justice Sharpe in the minority opinion aptly says: "In People v. Quicksall, 322 Mich. 351, Defendant was forty-four years of age and of fairly keen intellect with experience in Court procedure" (transcript of record, p. 94).

The many facts and factors involved must give us pause. Even the Solicitor General finds facts, which trouble him somewhat. See page 20 of the Response of the State of Michigan. It is submitted that these facts and factors which give us pause are sufficient and in fact demand that this cause be reversed and that the case be remanded to the Circuit Court for the County of Kalamazoo for trial.

H. Conclusion

Therefore it is respectfully submitted that Respondent is entitled to a new trial for the following reasons:

1. Because of lack of a complete record Respondent was deprived of his right to adequately appeal his conviction of guilty of first degree murder.

2. The Circuit Court of the County of Kalamazoo and the Supreme Court of the State of Michigan permitted testimony of witness after a twelve year lapse to supplement a defective record.

3. Respondent was sentenced on a plea gained by duress, coercion, fear and promise of leniency.

4. The trial court failed to inform Respondent of his right to counsel and he did not competently and intelligently waive said right.

5. The trial court failed to inform Respondent of his right to have counsel appointed and he did not competently and intelligently waive said right.

6. The trial court failed to inform Respondent of his right to a trial by jury and he did not competently and intelligently waive that right.

7. The trial court failed to inform Respondent of the consequences of his plea of guilty and he did not competently and intelligently plead and did not competently and intelligently waive his right to have the consequences explained.

8. The trial court denied Respondent his Constitutional Right to due process under the Fourteenth Amendment in the Constitution of the United States by denying him the aforesaid rights.

9. The Circuit Court for the County of Kalamazoo, Michigan and the Supreme Court of the State of Michigan erred in denying the Delayed Motion for a new trial for Respondent in view of the factual background of the case in applying the aforesaid denials of Constitutional Rights.

Wherefore it is prayed that this Honorable Court reverse the judgment of the Supreme Court of the State of Michigan affirming the denial by the Circuit Court for the County of Kalamazoo of Respondent's Delayed Motion for New Trial and that this cause be remanded to said Circuit

Court for the Ninth Judicial Circuit of Michigan for trial of the Respondent on the merits.

September 10, 1957

Respectfully submitted,

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OCT 9 1957
JOHN T. FEY, Clerk

BRIEF ON MERITS

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 42

WILLIE B. MOORE,

Appellant

v.

STATE OF MICHIGAN

On Writ of Certiorari to the Supreme Court of the State of Michigan

---

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

I

A

Opinion [*]

In addition to the opinion of the court below which is reported in *People v. Moore*, 344 Mich. 137 (R. 90-99), we also invite the Court's attention to the opinion of the successor judge denying petitioner's delayed motion for a new trial (R. 81).

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[*] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed transcript of record.

B

Appendix

We are including herewith as Appendix "1" pictures of the court house and jail at Kalamazoo, Michigan, in which the petitioner was confined and in which he entered his plea of guilty. The Court's attention is invited to the fact that the fifth floor, or the top floor, in which defendant was confined, is surrounded by a cement wall and that there are no windows which would permit defendant to see outside the walls into the streets.

II

Jurisdiction

Certiorari having been granted, jurisdiction is conceded.

III

Introduction

Constitutional provisions and statutes involved.

We concede that the constitutional provisions and statutes cited by appellant in his brief are accurate. We also cite the following Michigan court rules and statutes for the further information of the Court:

1. Section 16, Chap. XV, Act 175, Public Acts 1927, State of Mich., Comp. Laws 1948, § 775.10; Mich. Stat. Ann. (Henderson) § 28.1253 cited by appellant has been amended by Act 256, Public Acts of 1957, effective September 27, 1957 to provide counsel for defendants to conduct their ex-

aminations before a justice court or examining magistrate, which reads as follows:

> "Whenever any person charged with having committed any felony or misdemeanor shall be unable to procure counsel, and upon proper showing the presiding judge shall appoint some attorney to conduct the accused's examination before a justice court or examining magistrate and to conduct the defense and the attorney so appointed shall be entitled to receive from the county treasurer on the certificate of the presiding judge that such services have been fully rendered, such an amount as the presiding judge shall in his discretion deem reasonable compensation for the services performed."[1]

2. We also cite Mich. Comp. Laws 1948, § 769.26:

> "No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

3. We also cite Mich. Comp. Laws 1948, § 768.35; Mich. Comp. Laws 1929, § 17328; Mich. Stat. Ann. § 28.1058:

> "Whenever any person shall plead guilty to an information filed against him in any court, it shall be the

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[1] Michigan now provides the assistance of counsel at every stage of prosecution from arraignment to sentencing, as suggested by this Court in *Carter v. Illinois*, 329 U.S. 173, at 174.

duty of the judge of such court, before pronouncing judgment or sentence upon such plea, to become satisfied after such investigation as he may deem necessary for that purpose respecting the nature of the case and the circumstances of such plea, that said plea was made freely, with full knowledge of the nature of the accusation, and without undue influence. And whenever said judge shall have reason to doubt the truth of such plea of guilty, it shall be his duty to vacate the same, direct a plea of not guilty to be entered and order a trial of the issue thus formed."

4. Appellant in his brief refers to Michigan Court Rule 35-A,[2] which he admits was not in effect when appellant Moore pleaded guilty. This rule was adopted June 4, 1947 and became effective September 1, 1947; four months after the decision in *DeMeerleer v. Michigan* (1947) 329 U.S. 663:

"Sec. 1. Arraignment. If the accused is not represented by counsel upon arraignment, before he is required to plead the court shall advise the accused that he is entitled to a trial by jury and to have counsel, and that in case he is financially unable to provide counsel the court will, if accused so requests, appoint counsel for him. If the accused states he will procure counsel or requests that counsel be appointed, a reasonable time thereafter shall be allowed for counsel to consult with the accused before his plea shall be taken.

---

[2]

Under this rule it is now mandatory for the Court to apprise the accused, before he is required to plead, of his right to have counsel, at public expense if necessary, and a jury trial. If the accused desires counsel, he shall be given a reasonable time to consult with him before entering his plea. See Mich. Court Rules Ann (Honigman) p. 363.

"Sec. 2. Imposing sentence. If the accused pleads guilty, after such plea and before sentence the court shall inform the accused of the nature of the accusation and the consequence of his plea; and regardless of whether he is represented by counsel, the court shall examine the accused, not necessarily under oath, and as a condition of accepting the plea of guilty and imposing sentence shall ascertain that the plea was freely, understandingly and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency. Unless the court determines that the plea of guilty was so made, it shall not be accepted.

"Sec. 3. Record. The trial court shall cause a stenographic record to be made and promptly transcribed of the proceedings had under sections 1 and 2 above, and shall certify over his signature thereto that the same is a true record of the proceedings had. Thereupon the record so made shall be filed with the clerk of the court and become and be kept as a part of the record in the case. In any subsequent proceedings such record shall be competent evidence of the facts and circumstances therein recorded. This rule is mandatory but failure to comply therewith shall not be considered jurisdictional."

IV

Counter-Statement of Questions Involved

Defendant claims that he was deprived of Due Process violated by the State of Michigan because a Judge accepted his plea of guilty without appointing an attorney and he also claims that coercion and duress were used to force him to enter this plea. We agree that these are the issues in-

volved in the present case but we cannot accept the statement of questions involved as presented by petitioner, which are argumentative, state the facts incorrectly, and present a truncated version of the concept of due process. We believe that the following two questions present the statement of the questions involved much more fairly and concisely:

Point 1

In the circumstances peculiar to this case, was petitioner denied due process of law because under the then-current state court procedure (specifically approved by this Court in Quicksall v. Michigan, 339 U.S. 660) no verbatim stenographic record was made of his arraignment on an information charging murder, to which he pleaded guilty, although, in a hearing on a delayed motion for new trial ten years after acceptance of the plea, the successor judge (the original trial judge having meantime died) permitted reconstructing testimony of disinterested witnesses present in court on the occasion of the original arraignment to be admitted to supplement the formal record of the proceedings, the Court's own Journal, which contained the remarks of the trial judge in reviewing the proceedings as well as the results of the judge's statutory investigation to determine whether the plea was made freely and voluntarily, with full knowledge of the nature of the accusation and without undue influence?

Point 2

Upon the record in this case, has petitioner sustained the burden of proving such a disregard of fundamental fairness in the imposition of punishment by the State as would justify this Court in setting aside the sentence as violative of the Due Process Clause?

V

Counter-Statement of the Case

We point to such insufficiencies as are deemed to exist in petitioner's statement of the case.

The information (R. 4) on which petitioner was arraigned was not complicated but couched in simple understandable language reading in substance "that Willie B. Moore heretofore, to wit: on or about the 26th day of October, 1938, at the city of Kalamazoo, in the county of Kalamazoo aforesaid, murdered Josie Zeedyke."[3]

Although the court reporter's transcript recites (R. 6) that the accused was arraigned and pleaded guilty, the official journal entry (R. 20) which under Michigan law raises strong presumptions, discloses that following such plea but before imposing sentence, the trial judge took two important procedural steps in compliance with State law:[4] (a) the court was satisfied "after such investigation as was deemed necessary for that purpose, and by private exami-

---

[3]

Michigan's Code of Criminal Procedure, Chap. VII, §§ 43 and 44 (Comp. Laws 1948, §§ 767.43, 767.44 (Mich. Stat Ann 1954 Rev Vol 25, §§ 28.983, 28.984)] permit the use of just such a simplified short form information in a case of murder.

[4]

Section 35 of Chapter VIII of the Michigan Code of Criminal Procedure [Comp. Laws 1948, § 768.35 (Mich. Stat Ann. 1954 Rev. Vol. 25, § 28.1058)] cited supra, requires the trial judge to conduct an investigation into the voluntariness of any plea of guilty, while § 318 of the Mich. Penal Code [Comp. Laws 1948, § 750.318 (Mich. Stat. Ann. 1954 Rev. Vol. 25, § 28.550)] requires him to determine the degree of the offense of murder whenever an accused pleads guilty to that crime.

nation of the respondent, respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of said accusation, and without any undue influence"; and (b) he further proceeded "by the examination of four witnesses (R. 6-17) to determine the degree of the crime." Furthermore, before pronouncing sentence, the trial court asked the petitioner "if he had anything to say why judgment should not be pronounced against him." (R. 14)

The transcript of the court reporter, however, does show (R. 14-17) that after the trial judge had by examination of witnesses determined the degree of the offense of murder, he said (R. 15):

> "In my private interview with respondent I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired it. He assured me freely and voluntarily that he is guilty and that his one desire is to have it all over, to get to the institution to which he is committed, and to be under observation and to be examined."

Over 10 years later, on September 9, 1949, after the trial judge had died, and the prosecuting attorney had through illness become incapable of speech (R. 70, 76), petitioner acting *pro se* filed a petition for leave to file a delayed motion to set aside his plea of guilty, to vacate judgment and sentence and grant a new trial (Calendar Entries, R. 2). Although this motion is not printed or relied upon by petitioner's counsel, following the filing of the motion the record does disclose that on the 16th day of May, 1950 the prosecuting attorney and defense counsel appeared in open court for the purpose of arguing the matter (R. 19-20). On the 16th day of May, petitioner's counsel stated in open

court, among other things, that they were not relying on any general allegations, but on "just two things, on this record and on the *De Meerleer* case" (R. 20). It was his contention that *De Meerleer* is "directly in point and fits on all fours the case before the Bar at this time." It was then and there understood between counsel that all other points were waived.

Therefore, on the 26th day of May, 1950, petitioner's counsel filed a substitute motion (R. 17-18) based on the following grounds closely patterning those in *De Meerleer v. Michigan* (1947), 329 U.S. 663:

> "1. Because the verdict is contrary to the law, whereas said Respondent was deprived of rights essential to a fair trial.
>
> 2. Because at no time was assistance of counsel offered or mentioned to Respondent.
>
> 3. Because said Respondent was not informed of the consequences of his plea of guilty.
>
> 4. Because said Respondent was not informed of the consequences of his plea of guilty.
>
> Because said Respondent, being of the age of seventeen years at the time of said trial and possessed of only a seventh grade education, was not otherwise aware of his Constitutional rights."

At close of the first hearing (R. 57-58) on petitioner's motion, however, after Moore in his testimony had introduced the subject-matter (R. 40-41), and after the sheriff into whose hands petitioner had been placed prior to his arraignment, had met the issue by testimony (R. 49-58), counsel for petitioner moved the court for leave to amend

his motion "to add the additional grounds that Willie Moore's plea of guilty was not voluntary because of intimidation and coercion by the police and threats of mob violence" (R. 58). The prosecuting attorney interposed no objection thereto, and the court granted the motion. Thus the question of voluntariness of petitioner's plea is before this Court.

The following is an analysis of the testimony taken in open court upon hearing the petitioner's motion. We have broken it down into 3 divisions, (1) testimony bearing upon petitioner's age and lack of court experience, (2) testimony concerning his claim that upon arraignment he was not informed of his constitutional rights, and (3) testimony regarding his contention that his plea of guilty had been induced by coercion and intimidation.

1. Age and Experience—

When arraigned on a charge of murder in 1938, while petitioner undoubtedly was only 17 years of age, he had had some recent experience in court procedure. On or about the 8th day of October of that year, according to testimony of Walter W. Coe, a colored police lieutenant of the city of Grand Rapids, Michigan who as such had jurisdiction of colored cases as they came in (R. 24-25), Willie B. Moore, who had been arrested by Kalamazoo police upon request of Grand Rapids, was taken by him to the latter city where he was charged with unlawfully driving away an automobile, an offense punishable as a felony, Michigan Penal Code, § 413 [Comp. Laws Mich. § 750.413 (Mich. Stat. Ann. 1954 Rev. Vol. 25, § 28.645)] (R. 24).

This officer testified (R. 23) that Moore when arrested freely admitted theft of the car; that later in his presence he asked the boy's father whether he wished to employ a

lawyer for his son, and he replied no, that his son had already told him he had committed the offense and there was no need for an attorney.

On the 17th day of October, upon arraignment in the superior court of the city of Grand Rapids, Moore pleaded guilty to the charge aforesaid (R. 23). In response to a question whether there was then any discussion about the accused's right to counsel "or anything of that type," the officer replied that the trial judge asked Moore if he was pleading guilty of his own volition, whether he had been promised anything, or threatened in any way, that caused him so to plead, and that the accused replied, "No, I plead guilty because I am guilty." Thereupon he was given a suspended sentence, and 10 days later the officer learned (R. 23) that Moore had been arrested in Kalamazoo on a charge of murder.

Moore, in his testimony, denied that Detective Coe told him in Grand Rapids that he had a right to get an attorney or have the court appoint one for him (R. 41). He stated (R. 43) that his mother, not his father, had talked with him and the officer; that Coe had arranged for his mother to pay damages to the automobile in question, and when he went before the judge, Coe told him to plead guilty; when he did so he was immediately released on suspended sentence. The judge, Moore said, did not ask him about anything, other than to inquire whether he was guilty or not guilty (R. 43).

2. **Failure to advise of Constitutional Rights—**

Petitioner, upon direct examination (R. 40-47), testified (R. 50) that from October 26 to 29, 1938, while in custody, he was afforded no opportunity to call his family and he was positive that upon arraignment the trial judge did not

advise him of his right to counsel. Nor had he been told of such a right when arraigned in Grand Rapids on a previous occasion on a charge of auto theft (R. 41). However, he realized at the time that by pleading guilty to the charge of murder he could go to the penitentiary for the rest of his natural life but (because of alleged coercion presently referred to) there wasn't anything else for him to do, no other alternative (R. 41).

On cross-examination, however, Moore testified (R. 41) among other things, that during the period of his arrest awaiting arraignment on the murder charge, he tried to see his mother and father so he could have them make some arrangement to get a lawyer but he was not permitted to see them until after sentence; they had about half an hour to see him right after sentence. He wanted them to get someone; he didn't know whether he had a right to counsel or not. But he knew about lawyers and they were to help people in court.

He further testified (R. 42) that he was told he would go to prison for life if he pleaded guilty.

Moore also remembered (R. 45) that after his plea the trial judge took him into his private office. Sheriff Struble was also there who asked him certain things about the crime, leading him all the way through. While in private chambers the judge didn't talk about a jury trial but went on to ask the accused how old he was and (R. 45), how much schooling he had had. He did ask why Moore was pleading guilty and Moore did not reply (R. 45). Later Moore was again asked if the judge asked him why he pleaded guilty and he stated he did not (R. 45). He also inquired about his prior record in boys vocational school and a CCC camp (R. 45), and about stealing the automobile in Grand Rapids. He also asked Moore whether he had

worked at odd jobs in Zeedyke's house (where the murder took place), and he testified (R. 46):

> "I told the judge at that time that if I had have committed this here crime that Mrs. Zeedyke she would have knew me, knowing me as well as she did, that she would have made the statement that—who it was."

He further testified (R. 46) he did not tell the judge in chambers about wanting to get to an institution for care and observation but he did tell him he wanted to get away "from this mess here." When Moore and the trial judge came out of the private office, the judge read something in which he told what went on in chambers but it wasn't all true, though parts were true. Part was what Mr. Struble (the sheriff) and Mr. Tedrow (the prosecuting attorney) had told him (R. 47).

Examined by the court (R. 48-49), Moore testified that when the trial judge took him into his office, Sheriff Struble went along (R. 49). The sheriff was there (R. 48) reading off some of the details of the crime. Judge Weimer didn't tell him and he didn't know that murder carried life. He did not know what he was pleading to, but he was trying to get away from the mess. He did not know that a woman had been killed (R. 48-49) or that he was charged with having killed her. But he knew, when the prosecuting attorney read it off to him, that he was charged with murder but he did not know that murder carried life. He was not familiar with law at that time. He didn't think that murder carried anything because he hadn't come in contact with the law, except as a juvenile.

Reint Schurr, a practicing attorney in the city of Kalamazoo (R. 27), who was present in open court as a spectator and probably while awaiting the call of another matter,

testified (R. 27) that court convened at 9:00 o'clock in the morning. When Moore was brought in (R. 28), he stood at the front end of the counsel table for two or three minutes, awaiting the arrival of the trial judge. Immediately after court convened, the prosecuting attorney read the information to Moore and then said: "Which means, and which charges that you did murder on a certain day Mrs. Zeedyke" (R. 28).

After the court reporter had testified (R. 29-32) that in 1938 it was not the procedure to take notes at an arraignment, that it was the practice of this trial judge to arraign accused persons in open court and if they pleaded guilty, take them into his private office to talk to them, Mr. Schurr continued his testimony (R. 32-34) by stating that when Moore pleaded guilty, there was some talk between the judge and the accused relative "to whether Mr. Moore had a lawyer or wished a lawyer, desired a lawyer." The witness did not remember whether the trial judge asked Moore whether he had a lawyer or whether he wanted a lawyer (R. 33), "but there was some conversation about a lawyer. That is as far as my recollection goes on that" (R. 33). Moore, however, according to the witness' memory, said he didn't want one, he wanted to get it over with (R. 33). On cross-examination, this witness stated (R. 34) that his recollection told him, as near as he could remember, that Moore didn't want anything to do with lawyers, he wanted to get it over with.

This witness further testified (R. 33) that after Moore pled guilty, the trial judge asked him if he realized the fact that if the judge determined that the plea was good and should be accepted, he could sentence him to prison for life, and Moore said he realized that. On cross-examination (R. 34) he remembered this distinctly but he could

not recall that the judge also informed him he had a right to trial by jury.

John Zeedyke, son of the murdered woman (R. 35), a county agent in charge of juvenile offenders and who at one time had Willie Moore as one of his probationers, testified (R. 35-37) he was in court when Moore was arraigned and remembered when the accused was brought into the court room for that purpose. The witness was seated in the first row of benches (R. 36), and he remembered that the trial judge asked the accused whether he had a lawyer and he desired to have a lawyer after he had pleaded guilty. The answer to both questions was no, and, the witness stated, "to me I couldn't imagine a man who admitted such a terrible crime to me I wouldn't understand why they would take that."

Examined by the court (R. 38, 39) Mr. Zeedyke further testified (R. 38) that the trial judge told Moore of the seriousness of the offense, the consequence of a plea of guilty, and that a crime like that could mean commitment to prison for life. Further, the judge asked Moore whether his plea of guilty was voluntary and without coercion (R. 38). He did not remember any mention of a jury trial.

3. Plea induced by coercion—

Asked on direct examination (R. 40-41) why he did not consider his plea of guilty voluntary, Moore replied it was because Sheriff's department officials told him that if he didn't plead guilty they couldn't protect him, "under those conditions, . . . during the riot," that they didn't know what people would do, and that they couldn't protect him. He confessed to this murder under duress (R. 40-41).

Examined by the court (R. 48-49), Moore repeated (R.

48) that the sheriff told him he could not protect him. That was the night before he was brought into court. "There was," he said, "loud noises and hammering on the cell door." He was put in an isolated cell. (R. 48)

Later in the hearing, after witnesses had testified on behalf of the State, Moore took the stand in rebuttal (R. 77-78) to testify that he had talked with the prosecuting attorney the night he was arrested and that he then denied any participation in the crime. The police talked with him that night (R. 78) until around about 2:00 or 3:00 o'clock in the morning. They got him up about 8:00 the next morning and talked to him again all that day until about 10:00 or 11:00 o'clock when he was brought over to the county jail. That was the 27th of October and the police talked to him again the next day around 8:00 in the morning. On the 28th he admitted participation in the crime, and he changed his story partly through duress and partly through promises on the part of the prosecutor. He promised (R. 79) that if Moore would cooperate with the officials he would see to it that he would get a shorter sentence. The chief of police "coincided" with the prosecutor. Police officers didn't beat him up badly but they "pushed him around" in the police station.

Moore further testified (R. 79-80) that something unusual occurred the night of the 28th of October in the county jail. Some people were brought upstairs on the fifth floor where he was in an isolated cell. The people were brought to this cell door to look in on the prisoner. Someone out there said, "Well, let's get him now, get it over with." That is when the hammering on the (cell) door happened. What the sheriff told him was that it would be best for him to plead guilty to the crime, "because he didn't know how long that he could give me proper protection." He

decided at that time to plead guilty; there wasn't very much else for him to do.

When Moore went to Jackson prison, they took a back road (R. 80) because, the sheriff said, there was a group waiting on the proper road, so he would take a round-about way (R. 80).

Charles Struble, who at the time of Moore's arrest, plea and sentence was sheriff of the county (R. 49-50) testified (R. 50) that during the time of Moore's incarceration in the county jail, the sheriff lived on the 5th floor of the county building in an apartment adjoining the jail. During the time that Moore was in jail, there was no mobs or other large groups of people that were either up in the jail or in the building (R. 52). There were, he said on cross-examination (R. 54), newspaper headlines and while there was very much tension in the community, there were no crowds around the jail. Asked if he heard any talk around the streets (R. 52) of any potential mob violence, the witness replied "there was conversation all about the streets in regard to it and making their remarks. I don't know as I could go into them," but he did not recall of any crowds gathering. No officers went into the Judge's chambers with Moore (50, 54).

The former sheriff also testified (R. 52) he did not tell Moore that he couldn't protect him nor did he advise him that it would probably be best to plead guilty. He told Moore that if he was guilty of the crime he might better own up on it because there could be trouble. "Tension is very high outside and there could be trouble. If Moore was not guilty, then, the sheriff told him, "I would stand pat forever after." He then advised him as follows: (R. 52-53).

"I spoke to him about what would be required of him and I would have to take him to the municipal court for his arraignment in the lower court . . . and I told him he would be entitled to a hearing in lower court and I says, 'There you will have the judge read to you and you can waive or demand an examination. You are entitled to an examination over there. It is my duty, and it is up to me to protect you, to use every effort at my command to protect you . . . but . . . the tension is very high out there and I am just telling you what could happen if it was started by someone.' "

The tension was high in the community. He didn't know whether he came out and said at any time for him to plead one way or the other, but, he testified (R. 53), "what I was putting over to him was the fact that if you are guilty and will be sent away you might better be getting away before trouble, because I had had information there was certain colored fellows, a group of them, that was going to interfere with me, and also that there was a bunch of Holland fellows going to meet me when I go to Jackson, they would meet me there at Galesburg there, and, therefore, when he was sentenced I avoided the main route and went way through by Gull Lake and across over in the hills there."

While Moore was in the county jail, however, no police or officers on the sheriff's staff threatened or intimidated him (R. 53).

Further (R. 54), he testified, when court was in session on this case there was quite a group of people around but nothing that appeared like unusual violence or anything of that kind. He could not recall anyone beating on the door of the county jail at any time while Moore was in custody. You can't beat on doors up there very well. They

were all steel doors and Moore was in a segregated cell there by himself. He did not believe Moore made any request to call his family.

O. K. Buder, who had Moore in custody when he was under sheriff in October, 1938 (R. 59-61), testified (R. 59) he was out in the street and in the main office on the ground floor (of the county building) probably a half dozen times during those two days. His living quarters were on the sixth floor of that building (R. 60). The jail is located on the top floor with a private elevator as means of access, and a stairway kept secret and locked so that any group of people would have to reach the jail by means of the elevator only, otherwise they would have to scale the walls of the building. During the time that Moore was in jail there were no large crowds in the jail or the main office. He knew nothing of banging on doors. It was utterly impossible for anybody to get in and bang on cell doors (R. 60). While church groups come up there three times a week, he had known of no large groups to get up to the jail against the wishes of the sheriff's department (R. 60). The jail elevator is locked.

On cross-examination, Buder said (R. 62-63) the jail records showed that on October 27, 1938 Moore was brought to the county jail and on the 29th he was transferred to prison at Jackson.

Glenn K. Hammel, chief deputy sheriff (R. 66) testified (R. 67) he "wouldn't want to go out on the tension part," although there was discussion of the Moore case such as they had the day of hearing, about a recent rape case in Kalamazoo. You might hear people in restaurants talking about it, or they might ask questions as to progress in the matter. At no time did he see large groups of people about the county building in October, 1938.

This witness further testified (R. 68) that while Moore was in court for arraignment, he was very relaxed and there was no sign of fear. He was nonchalant.

VI

ARGUMENT

Point 1

In the circumstances peculiar to this case, was petitioner denied due process of law because under the then-current state court procedure (specifically approved by this Court in Quicksall v. Michigan, 339 U.S. 660) no verbatim stenographic record was made of his arraignment on an information charging murder, to which he pleaded guilty, although, in a hearing on a delayed motion for new trial ten years after acceptance of the plea, the successor judge (the original trial judge having meantime died) permitted reconstructing testimony of disinterested witnesses present in court on the occasion of the original arraignment to be admitted to supplement the formal record of the proceedings, the Court's own Journal, which contained the remarks of the trial judge in reviewing the proceedings as well as the results of the judge's statutory investigation to determine whether the plea was made freely and voluntarily, with full knowledge of the nature of the accusation and without undue influence?

The answer to this question, as a matter of law is to be found in *Quicksall v. Michigan*, 339 U.S. 660. In *Quicksall* the identical procedure complained of by petitioner in this case was reviewed by this court and approved in an opinion delivered by Mr. Justice Frankfurter. Coincidentally, Judge

Weimer, Circuit Judge for Kalamazoo County, Michigan accepted the guilty plea of *Quicksall,* as he did in the instant case. The circumstances following the guilty plea were formally stated by Judge Weimer for the record in *Quicksall,* at page 662:

> "The record may show that this respondent [petitioner] has just offered to plead guilty and has pleaded guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty." (Page 662)

This statement is identical with the statement made by Judge Weimer in regard to petitioner Moore. (R. 14-16) Following the acceptance of Moore's plea, the Judge followed the procedure outlined in *Quicksall.* As required by local law, he inquired into the degree of the crime. [CL 1948, § 750.318 (Mich Stat Ann § 28.550—Henderson 1938)].[5] Witnesses were called to the stand in the

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[5]

"The jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but, if such person shall be convicted by confession, the court shall proceed by examination of witnesses to determine the degree of the crime, and shall render judgment accordingly. All testimony taken at such examination shall be taken in open court and a typewritten transcript or copy thereof, certified by the court reporter taking the same, shall be placed in the file of the case in the office of the county clerk."

present case and their testimony recorded. They detailed the circumstances surrounding the murder of Mrs. Zeedyke. One of the witnesses, the daughter of the victim, placed petitioner at the scene of the crime just prior to the commission of the murder. Following their testimony Judge Weimer sentenced Moore to life.

A similar sentence was imposed upon Quicksall by Judge Weimer. [CL 1948, § 750.316 (Mich Stat Ann § 28.548—Henderson)].[6]

Many years after his sentence *Quicksall* petitioned the Circuit Court for Kalamazoo County, Michigan, to vacate his sentence and to grant him a new trial. Like the present petitioner, he claimed there were constitutional infirmities in that he did not have assistance of counsel and the plea was induced by misrepresentations. Judge Weimer heard the motion to vacate the sentence and permitted reconstructing testimony. The sheriff, Quicksall himself, and other witnesses testified. In *Quicksall*, Judge Weimer [the successor Judge in the present case] took no stock in the reconstructing memory of the petitioner and denied his motion. After affirmance by the Michigan Supreme Court the case was reviewed by this Court and affirmed.

We believe it is sufficient for us to cite *Quicksall* as authority for our claim that the proceedings surrounding the plea of guilty and the testimony which was subsequently taken by the successor Judge to determine the events which

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[6] "All murder which shall be perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be murder of the first [1st] degree, and shall be punished by solitary confinement at hard labor in the state prison for life."

happened on the date of petitioner's arraignment are not violative of due process but are perfectly proper. We also invite the Court's attention to the fact that the original record which was made in this case was complete under the procedures of the State of Michigan which were in effect at the time of the arraignment. (R. 29-32) Furthermore, respondent Moore has failed to show that any error was committed in the course of his proceedings. Error should therefore not be presumed at this late date, especially since the delay was created by respondent who has failed to excuse the lapse of such a long period of time in his brief. The case of *Simon Grigg v. The People*, 31 Michigan 471, cited by respondent in his brief, is not applicable to this case; there was no record whatsoever in that case as to whether an arraignment was had or a plea made. This is not the situation in the case at bar. The most potent argument is that respondent himself heavily relies in his argument upon the testimony given by him and by the sheriff at these later hearings. When the respondent filed his original petition for leave to file a delayed motion for new trial, the grounds upon which he relied were based on this Court's decision in *DeMeerleer v. Michigan.* Prior to the hearing on his motion for new trial, before Circuit Judge Lucien F. Sweet on May 16, 1950, his counsel, John W. Roxborough, II, advised the Court:

> "So there won't be any misunderstandings, we aren't relying on any general allegations; we are relying just on two things, on this record and on the DeMeerleer case. "I would like to call to the Court's attention that at that time Willie B. Moore was seventeen years of age; the extent of his education then was a seventh grade education. It is our contention that he did not have a fair trial and that contention is substantiated by the case of DeMeerleer vs. The People

of the State of Michigan, 329 U.S., 663, decided February 3, 1947.

"It is our contention that this case is directly in point and fits on all fours the case before the Bar at this time." (R. 20).

To this statement, Mr. William E. Sykes, the Assistant Prosecuting Attorney, replied:

"If the Court please, I understand now that the Defendant has waived all claims to a new trial on the basis of the grounds that he has stated in his motion and that all other grounds with the exception of the claim that the DeMeerleer case as stated—the citation as stated by Defendant's Counsel, in his support for his motion and the record as offered by the Defendant, and more particularly, the portions of the record that refer to the lack of counsel and the lack of advice of the right to Counsel, and the advice as to the consequences of a plea of guilty, is this correct? Is that the impression of the Defendant or the claim of the Defendant?

"MR. ROXBOROUGH: Yes, in addition to the other points in the DeMeerleer case, more particularly the quick justice as it has been called." (R. 20).

Following this statement of respondent's counsel, testimony was taken regarding the circumstances surrounding petitioner's plea of guilty. Petitioner himself took the stand and testified with reference to alleged intimidation and coercion which lead to his plea of guilty. At the close of the testimony, his counsel, Mr. Roxborough, then requested that the Court allow him to amend his motion to include the new grounds of intimidation and duress, which

it was alleged had been adduced from the testimony of the witnesses at the hearing on the delayed motion for new trial. This was granted and the prosecutor then requested adjournment in order to obtain rebutting testimony (R. 58). Thus we have a clear statement by appellant's counsel that he would accept the testimony of the witnesses, both at the first hearing of the delayed motion for new trial and at the subsequent hearings which were set by the Court at this time (R. 58).

In objecting to the testimony of the witnesses which was presented at the hearing on delayed motion for new trial, while at the same time using the same as an argument for the granting of the present petition before this Court, petitioner, it seems to us, is attempting to obtain the benefits of what might be termed a selective appeal. He uses such portions of the testimony as may suit his purpose while denying to the People of the State of Michigan the right to use any portions of the same testimony which might militate against his position. We doubt that this type of action conduces to the "cool review" of this case as urged by petitioner. This Court, we are certain, in its zealous desire to ascertain the truth of the circumstances surrounding Moore's plea will consider all of the reconstructing testimony here presented as did the Michigan Supreme Court in its review of the case and approve them as it did in Quicksall.

Point 2

Upon the record in this case, has petitioner sustained the burden of proving such a disregard of fundamental fairness in the imposition of punishment by the State as would justify this Court in setting aside the sentence as violative of the Due Process Clause?

We believe that our statement of the question is a fairer and more complete statement of the applicable law than that which was presented by defendant under his various subheadings.

When an accused without counsel acquiesces in a trial resulting in his conviction, and later seeks release; the rule is well settled that the burden rests upon him to establish that he did not completely and intelligently waive his right to assistance of counsel. 25 Am. Jur., § 50, page 180; *Johnson v. Zerbst*, 304 U.S. 458. The same rule applies to a subsequent claim that the plea was induced by coercion, by threats, or by intimidation. All the circumstances surrounding defendant's plea, such as his age and experience, his understanding of the plea, the fact whether it was free and voluntary, evidence of his education, mental capacity, experience, and understanding, are to be taken into consideration. Other factors to be considered are whether petitioner was ignorant of legal procedure, confused and bewildered, as well as the haste in placing him on trial, and the pressure, or lack thereof, to induce him to enter his plea. If defendant is competent, knows what he is doing, is aware of the offense charged and its penalty, as well as courtroom procedure, so as not to be confused or frightened by arraignment, surely such a waiver, regardless of the fact that he was only 17 years of age, must be allowed to stand.

In our analysis of the facts presented, *supra*, we subdivided the testimony down under 3 headings, (1) testimony bearing upon petitioner's age and lack of court experience, (2) testimony concerning his claim that upon arraignment he was not informed of his constitutional rights, and (3) testimony regarding his contention that his plea of guilty had been induced by coercion and intimidation.

We believe that a fair reading of the testimony presented

shows clearly that defendant in no way sustained the burden of proof of showing that his plea was not voluntarily made, that he was not informed of counsel at the time he entered his plea, that he was not aware of the consequences of his plea, and that he was not informed of his right to a trial by jury. Countervailing proof to the testimony of defendant was offered by the People in the petition for leave to file a delayed motion for a new trial which clearly confuted the contentions of defendant.

All of defendant's present allegations were passed upon by the successor Judge before whom petitioner and the other witnesses appeared. He was in a position to observe the demeanor of the witnesses, gave no credence to Moore's testimony, stated he did not believe him, and resolved all issues of fact against him, holding that he had not sustained the burden of proof laid upon those who seek to vacate a plea of guilty. (R. 81-84). This ruling of the successor Judge was later affirmed by the Michigan Supreme Court which reviewed his action. *People v. Moore*, 344 Michigan 137 (R. 90-99).

Petitioner relies most heavily upon the case of *DeMeerleer vs. The People of the State of Michigan*, 329 U.S. 663, both here and in the arguments on the motion for new trial before the Michigan Supreme Court. Perhaps a review of this case and the foundation of other Supreme Court cases upon which it rests may be helpful at this point. The opinion in *DeMeerleer* ends with reference to the action of the Court in *Betts vs. Brady*, 316 U.S. 445. It is therefore necessary that we determine the action of the Court in *Betts vs. Brady*. In *Betts* this Court stated that the question was whether petitioner's conviction and sentence was a deprivation of liberty without due process of law. The answer it concluded is to be found in the Fourteenth Amendment concept of due process.

The Court, through Mr. Justice Roberts, then discussed the question of whether the Fourteenth Amendment guarantees that in every case, whatever the circumstances, the accused must be furnished with counsel. Mr. Justice Roberts referred to the case of Powell vs. Alabama, 287 U.S. 45, in which the Court stated, "Under the circumstances * * * the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process," but added, "Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that is necessary now to decide, as we do decide, is that in a capital case, where the Defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the Court, whether requested or not, to assign Counsel for him as a necessary requisite of due process of law * * *."

Justice Roberts also discussed the cases of *Avery vs. Alabama*, 308 U.S. 444; and *Smith vs. O'Grady*, 312 U.S. 329, which are decisions on similar issues. From his discussion of these cases and of the fundamental laws of all the states, he concluded, at Page 471: "In the light of this vidence we are unable to say that the concept of due process incorporated in the Fourteenth Amendment obligates the State, whatever may be their own views, to furnish counsel in every such case. Every Court has power, if it deems proper, to appoint counsel, for that course seems to be required in the interest of fairness." The Court also remarked at page 462:

> "The phrase formulates a concept less rigid and of more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial of funda-

mental fairness, shocking to the universal sense of justice may, in other circumstances, and in the light of other considerations, fall short of such denial. In the application of such a concept, there is always the danger of falling into the habit of formulating the guarantee into a set of hard and fast rules, the application of which, in a given case, may be to ignore the qualifying factors therein disclosed."

The firm logic so clearly expressed by the Court, makes it obvious that the decisions in each case must rest squarely upon the facts of that case. Each case differs from similar cases in such fashion that its primary value lies in its use as an analogy to the case at hand.

A close scrutiny of the facts in *DeMeerleer* is in order. The Court in that case based its opinion upon several factors:

1. A seventeen year old defendant.

2. Arraigned, tried and convicted of first degree murder and sentenced to life imprisonment all in one day when such legal proceedings were unfamiliar to him.

3. A serious and complicated criminal charge.

4. Never advised of his right to counsel nor was mention made of counsel.

5. Not apprised of the consequences of his plea.

In the case at bar we admit that a seventeen year old boy is involved and that the charge is a serious criminal offense, although not a complicated one. The record is clear and the Respondent admitted that the Information containing

the clear word "murder" was read to him and that he knew that he was being arraigned and charged with the murder of Mrs. Zeedyke (R. 45). From this point on, the present case varies greatly in its facts from *DeMeerleer* and other cases where a violation of due process has been determined to exist. It is believed that this can best be shown by discussing point by point the contentions of Respondent based on *DeMeerleer* as to the manner in which he was denied due process of law.

(a) The claim that petitioner's plea was gained by coercion and fear.

Although respondent, in his testimony on Motion for New Trial, claimed that he was frightened and that he had been coerced into the plea of guilty, all of the testimony on the record refutes such a claim. The testimony of a disinterested witness, Reint Schuur, an attorney of the city of Kalamazoo, was to the effect that the judge inquired into the facts concerning this murder in open Court and that this conversation went on for some fifteen minutes, and that following that the Judge talked with Moore alone in his private chambers (R. 26-29). Sheriff Charles Struble, on the Motion for New Trial also testified in this regard:

"Q. While he was at your jail, do you remember any police officers on your staff threatening him?

A. Oh, not at all.

Q. Or intimidating him?

A. Oh, no.

Q. You don't recall that?

A. I don't recall that and I doubt very much if there

was anything of that kind, because he was treated with respect all the way through." (R. 53-54)

Sheriff Struble also testified that there was no request made by petitioner to call his family (R. 55).

A third witness, Glenn K. Hammel, who was a deputy sheriff at the time of the arraignment and chief deputy at the time of testimony, testified:

> "He was very relaxed. There was no sign of fear and no showing, either physically or by speech." (R. 68)

Mr. Hammel also stated that he was nonchalant (R. 68).

Raymond W. Fox, one of the Judges of this Circuit, who was assistant prosecuting attorney, at time of the arrest testified that he was present when Willie Moore was questioned in the police station; that he thought that his answers were fair, honest and candid, and that he seemed very calm and not excited in the least. He spoke about the crime quite in a matter-of-fact way. His whole attitude was such that it was hard for the witness to understand his lack of emotion in telling the story of just what happened. (R. 68-69). Judge Fox also testified that he remembered nothing unusual about Willie Moore at the time of his questioning (R. 77).

In view of the overwhelming weight of this testimony, it is apparent that there was no coercion or duress used in obtaining a plea from this petitioner and that he was not in fear at the time that he pleaded guilty. The fact that the Trial Judge spent almost a half hour, both in open Court and in private in his chambers with this petitioner discussing the crime, is corroborative of this fact since it is not alleged that the Trial Judge was a party to the

coercion that petitioner complains of, and it is apparent that in this amount of time the Trial Judge most certainly would have determined whether this plea were voluntary or not. As further evidence that this petitioner was not held without the knowledge of his parents is the fact that petitioner admitted in his testimony that he saw his parents in the police station. The fact that he did not talk with them is not a decisive factor since we have the sheriff's testimony that he made no request to be allowed to talk with them.

The instant case differs from *DeMeerleer* in that here the time element is different. The petitioner was arrested in the late afternoon of October 26th and examined before the magistrate on October 28th, taken into circuit court on the morning of the 29th, which is a far cry from being arrested, taken before the magistrate, tried, convicted and sentenced in one day as was the case in *DeMeerleer*. Nor was this petitioner ignorant of legal proceedings. A month prior to this time he had been arraigned and pleaded guilty to auto theft in Grand Rapids, in addition to having had considerable experience with the juvenile authorities prior to this time.

Perhaps the most conclusive evidence that there was no fear, coercion or duress is shown by the transcript of Judge Weimer's remarks at the time of sentence, which was taken in open court by the official court stenographer at the time of sentence. Judge Weimer stated: "Such is his story to me in private, told very calmly; without any compulsion whatever." (R. 16)

(b) The claim that petitioner did not knowingly waive his right to counsel.

We do not take issue with petitioner's claim that the

Court should inform him of his right to counsel, but do contend that the evidence clearly shows that he was fully apprised of this right. We refer once again to the testimony of Reint Schuur, who was present at the time of the arraignment and testified on the Motion for New Trial:

> "Then there was some conversation between the Judge and Mr. Moore relative to whether Mr. Moore had a lawyer or wished a lawyer, desired a lawyer. I don't remember whether the Judge asked him whether he had a lawyer or whether he wanted a lawyer, but there was some conversation about a lawyer. That is about as far as my recollection goes on that." (R. 33)

Mr. Schuur also testified along these lines at page 34 of the Record:

> "A. No, there was something said by the Judge asking whether he had counsel or whether he wanted counsel.
>
> Q. Do you remember what was said?
>
> A. It was one of the two, but I can't tell which.
>
> Q. Do you remember what Moore answered?
>
> A. As near—my recollection tells me as near as I can remember, that he didn't want anything to do with lawyers, he wanted to get it over with."

Mr. John Zeedyke also testified, as shown on page 34 of the Record:

> "He (Judge Weimer) asked him whether he had a lawyer and he also asked him whether he desired to have a lawyer, and to the answer of this both was 'No'."

From the testimony of these witnesses, it is apparent that his rights to an attorney were fully explained to him and the fact that he understood that right is shown by Mr. Schuur's testimony that at the time of arraignment Moore said he didn't want anything to do with lawyers, he wanted to get it over with.

(c) The claim that there was a duty imposed upon the Court to appoint counsel for petitioner even though he had indicated that he did not desire one.

The rule in this regard seems amply stated in *Quicksall*, 339 U.S. 660, where the Court used the following language:

> "To invalidate a plea of guilty, the prisoner must establish that for want of benefit of counsel, an ingredient of unfairness actively operated in the process that resulted in his confinement."

Pertinent language also appears in *Foster vs. People of the State of Illinois*, 332 U.S. 134. In referring to the *De-Meerleer* case, it is stated:

> "Only the other day in a case concerning a charge of first degree murder against a seventeen year old defendant, in which we found a deprivation of rights essential to a fair hearing, we took pains to point out that the Court did not explain the consequences of the plea of guilty and the record indicates considerable confusion in the petitioner's mind at the time of the arraignment to the effect of such a plea."

Referring to the case at bar, the Court said:

> "We thus have in effect the bald claim that merely because the record does not disclose an offer of counsel

of a defendant upon a plea of guilty, although the Court before accepting the plea duly advised him of his 'right of trial', and the consequences of such a plea, he is deprived of rights essential to a fair hearing under the Federal Constitution. We reject such a claim. Most incarcerations are upon pleas of guilty, and probably most such pleas have been made without the felt need of counsel. It is not for us to suggest that it might be desirable to offer every accused who desires to plead guilty the opportunity for counsel and to enter with formality upon the records the deliberate disclaimer of his need for counsel because of a full appreciation of the meaning of a plea of guilty as expounded by responsible judges. Our duty does not go beyond safeguarding 'rights essential to a fair hearing' by the state. After all due process 'itself a historical product,' is not to be turned into a destructive dogma in the administration of systems of criminal justice under which the states have lived not only before the fourteenth amendment, but for the eighty (80) years since its adoption. It does not militate against respect for the deeply rooted systems of criminal justice in the state that such an abrupt innovation as recognition of the constitutional claim herein made implies, would furnish opportunities hitherto uncontemplated for opening wide the prison doors of the land."

Prior to the adoption of Court Rule 35-A, the Michigan Supreme Court in *In re Elliott*, 315 Mich. 662 (1946), reviewed the question of the right to counsel in a criminal case.[7] Mr. Justice Boyles, after analyzing the Michigan Constitution and statutes, reviewed the case of *People vs.*

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[7] We discuss the Michigan Supreme Court's rulings on this point to indicate to the Court Michigan's position at the time petitioner offered his plea.

Williams, 225 Mich. 133, and cited from it with approval the following rule as laid down in that case:

> "An accused is not entitled, as of right, to have counsel assigned by the Court to advise him relative to his plea. The State Constitution, Article II, Section 19, secures to an accused the right 'to have counsel for his defense.' This does not mean he shall have counsel at public expense. It is a guarantee of right to employ and have counsel; a right not always recognized in early English criminal cases. Section 15623, 3 Comp. Laws, 1915, also allows an accused to be heard by counsel. This is only declaratory of the right secured to an accused by the provision mentioned in the constitution and is on a par with the right to produce witnesses and proofs in his favor, but does not mean he shall have counsel at public expense. Section 15912, 3 Comp. Laws 1915, permits the Court to appoint an attorney at public expense to conduct the defense of an accused when he is unable to procure counsel. This statute is permissive; its provision requires a showing of inability of an accused to procure counsel, and, as a rule, to which, of course, there may be exceptions, and not be invoked by an accused until after plea and not at all under a plea of guilty."

In his discussion of other cases Justice Boyles also refers to *People vs. Crandell*, 270 Mich 124, where the defendant, charged with murder, petitioned the Court after sentence on a plea of guilty to set aside the plea and sentence and allow the defendant a trial with assistance of counsel. The Court said in that case, at pages 126, 127, 129:

> "Before arraignment Defendant made a written confession and; after plea, was examined by the Judge and again confessed his crime in detail of the circumstances.

Upon his plea, the Court examined witnesses; the written confession was placed in evidence and Court could do no less than sentence him to imprisonment for life for murder in the first degree. Act Number 328, Section 316 Public Acts of 1931.

"No claim is made by Defendant of coercion in obtaining the confession; neither does he now claim that the confession was not true.

"The procedure employed in the instance at bar was expeditious and might well, considering the age of the boy, have been less speedy and an opportunity afforded the father to be present, but, if, in accord with lawful action, we can not set the same aside. The law affords an accused the benefit of counsel if he so desires; of his own selection if employed by him; and by the Court if he is without means and so requests. No request was made and the Court did not exercise the humane power of providing the boy with counsel.

"• • •

"The constitutional provision securing to the accused the right to have the assistance of counsel is not at all applicable to this case."

Thus in *In re Elliott, Supra,* the Michigan Supreme Court, after an exhaustive review of its decisions, concluded that an accused is not entitled as of right to have counsel assigned by court to advise him at public expense relative to his plea. It equates this right to counsel with the right of the accused to produce witnesses and proofs in his favor. We remark (by way of parenthesis) that under the Michigan decisions a plea of guilty may be changed to one of not

guilty at any time prior to sentencing. *People v. Hollingsworth*, 338 Michigan 161.

In discussing this question, it would also seem wise to consider a line of United States Supreme Court cases in which a denial of due process on this ground was claimed.

In *Powell vs. Alabama*, 287 U.S. 45, two young, illiterate, and ignorant Negroes, surrounded by hostile sentiment, were charged with rape of two white girls. They pleaded not guilty. Thereupon the Court appointed "all the members of the bar" for their counsel. Actually, this resulted in their having no effective counsel. Because of the other surrounding circumstances, such as the threat of lynching, the Court found that they had been denied a fair trial. This was commonly interpreted to require the appointment of counsel in a capital case but the case of *Betts vs. Brady, Supra*, qualified this broad general rule as we have seen above.

In view of the overwhelming authority and the fact that this petitioner clearly was afforded chance for counsel and stated without question that he wanted nothing to do with lawyers, but wanted to get it over with, it seems clear that the Court had no duty to force counsel upon him against his wishes.

(d) The claim that respondent was not informed of his right to a trial by jury.

Again we agree that it is desirable, that the Court inform the petitioner of his right to trial by jury. However, it is clear in this case that his right to trial by jury was explained to him and that he waived it. We need only refer to the remark of Judge Weimer at the time of sentence in the official transcript of that proceeding as proof of this:

"In my private interview with Respondent, I assured him that he must not plead guilty unless he really is guilty; that he was not required to plead guilty; that he could have a trial by jury if he desired. He assured me freely and voluntarily that he is guilty and his one desire is to have it all over * * *." (R. 15).

The record also shows on page 17 that the Court gave the petitioner the opportunity to say anything he desired before sentence and the petitioner indicated that he had nothing to say. These remarks of the trial judge were not refuted at the time and the first that was heard from petitioner that he was not apprised of his right to trial by jury was upon his motion for new trial some twelve years later in 1950. It seems clear from this that he not only was fully advised of his rights to trial by jury but that he clearly waived his right to same.

(e) The claim that petitioner was not aware of the consequences of his plea.

It is inconceivable that petitioner now argues that he did not understand the consequences of his plea, since, as late as 1950, he admitted, under oath, that he did understand that he could be sentenced to prison for life. However, we do not need to rely upon his own denial of knowledge of the consequences of his plea since the record is clear that it was fully explained to him. We refer first to the testimony of Reint Schuur; (R. 32) "* * * Mr. Tedrow arraigned him, read the Information, and then he said, 'Which means, and which charges that you did murder on a certain day Mrs. Zeedyk'." (R. 28-32) Mr. Schuur also testified in 1950:

"Then Judge Weimer asked Mr. Moore if he realized the fact that if he, the Judge, determined, that the

plea was a good plea and could be accepted, that he could sentence Mr. Moore to prison for life. Mr. Moore said he realized that" (R. 32-33).

In cross-examination, this matter was once again considered by counsel for petitioner, when he asked Mr. Schuur:

"Q. You distinctly remember that the Judge informed Willie Moore he would be sentenced to life?

A. That he could sentence him to life.

Q. Do you remember that distinctly?

A. I remember that distinctly" (R. 34).

Turning to the testimony of petitioner himself at the motion for new trial in 1950, we find the following questions and answers:

"Q. You stated to Mr. Roxborough that you knew that you would go to prison for life if you pleaded guilty.

A. Well, I didn't know no more than what they told me.

Q. You were told that then?

A. Well, yes, I was told." (R. 42)

This testimony clearly indicates that the consequences of his plea were fully explained to Moore, and that he fully understood them.

The one additional issue raised by petitioner in his discussion of the question above is the fact that the petitioner

was not furnished a copy of the Information and he relies upon the case of *Edwards vs. People*, 39 *Michigan 760*. It should be pointed out, however, that the clear intention of the Court in that case as stated by the writer of the opinion was to say that the purpose of furnishing a copy of the Information to the accused was to enable him to prepare a defense and to make such inquiries as may be necessary about the witnesses endorsed. This clearly applies to a situation where the petitioner has entered a plea of not guilty and wishes to prepare a defense in the case. There is no apparent reason why, if an accused has pleaded guilty, he should be furnished with a copy of the Information, since he is not concerned in preparing a defense. The record is clear, however, from the testimony of Mr. Schuur that the Information was read to this petitioner and in fact Mr. Tedrow, the prosecutor, went on to explain to him that the Information meant that he was charged with the murder of Mrs. Zeedyk. (R. 32-33)

(f) The claim that there was a general denial of petitioner's constitutional rights.

In considering the question of general denial of due process, it is significant to observe the following language in the order sentencing the petitioner entered Saturday, October 29, 1938, and signed by Judge George V. Weimer. The Order states in part as follows:

> "* * * the Court before pronouncing sentence upon such a plea, being satisfied after such investigation as was deemed necessary for that purpose, and by private examination of the Respondent, respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of the nature of said accusations, and without any undue influence, and having been, on motion of the Prosecut-

ing Attorney, brought to the bar at the Court for sentence, and having there been asked by the Court if he had anything to say why judgment should not be pronounced against him, and alleging no reason to the contrary * * *." (R. 16-17).

It is submitted that this is a clear and concise statement by the Court in his order of sentence that the Constitutional privileges were extended to this petitioner and that he was accorded a fair and impartial day in Court.

Uveges v. Pennsylvania, 335 U.S. 427 differs from the present case in that the record showed no attempt on the part of the court to make the petitioner understand the consequences of his plea. There was also an undenied allegation on the record that he was never advised of his right to counsel. Here the trial judge stated specifically "from private examination of the respondent, respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of such accusation and without any undue influence". The allegations of petitioner are therefore contradicted by the record at the time of the sentence and *Uveges* does not apply.

Fikes v. Alabama, 352 U.S. 191. Here the petitioner was questioned continuously for five days, friends and relatives, and an attorney were denied access to him, and there was testimony by three psychiatrists at the trial . . . to the effect that petitioner was schizophrenic and highly suggestible. It would seem, then that the court placed no little weight on Fikes' mental capacity. Mental capacity of any sort affects the weight to be given a confession and if it is of a serious character it may render a confession inadmissible. However, mental capacity is not the only factor to be considered. Moore did see his parents, the questioning was for a much shorter period than that which transpired

in *Fikes* and the trial very carefully ascertained by questioning him about his schooling and whether his mental capacity was such that he understood the serious nature of the charge.

Petitioner questions the appropriateness of the application of *Quicksall* to the present case by the Michigan Supreme Court. We think the Michigan Supreme Court acted properly. It reviewed the proceedings involving the plea and the subsequent Motion for New Trial in the light of *Quicksall*, and approved them. It also considered the age, the background, the education, the credibility of Moore, and the circumstances surrounding the plea in their totality concluded that the record did not sustain petitioner's claim was deprived of due process. We believe that this ruling of the Michigan Supreme Court is a sound one and should be of very persuasive authority to this Court in its own consideration of the case.

VII

Conclusion

The record is clear that the court room at the time of Moore's plea was less than half full, that there was no excitement or other circumstances which might be held to place the petitioner in a state of apprehension. Therefore, it is apparent that the plea of this petitioner was not gained by duress. He was fully advised of his right to counsel. He was likewise advised of his right to trial by jury, and understood the consequences of his plea of guilty. The facts in this case are, in fact, contrary to those of the DeMeerleer case and other cases in which it was held that there was a deprivation of due process. There was an affirmative show-

ing here that this petitioner was accorded the full protection of the law.

In any event, on the face of the record as it now stands, we respectfully submit that the judgment of the court below should be affirmed.

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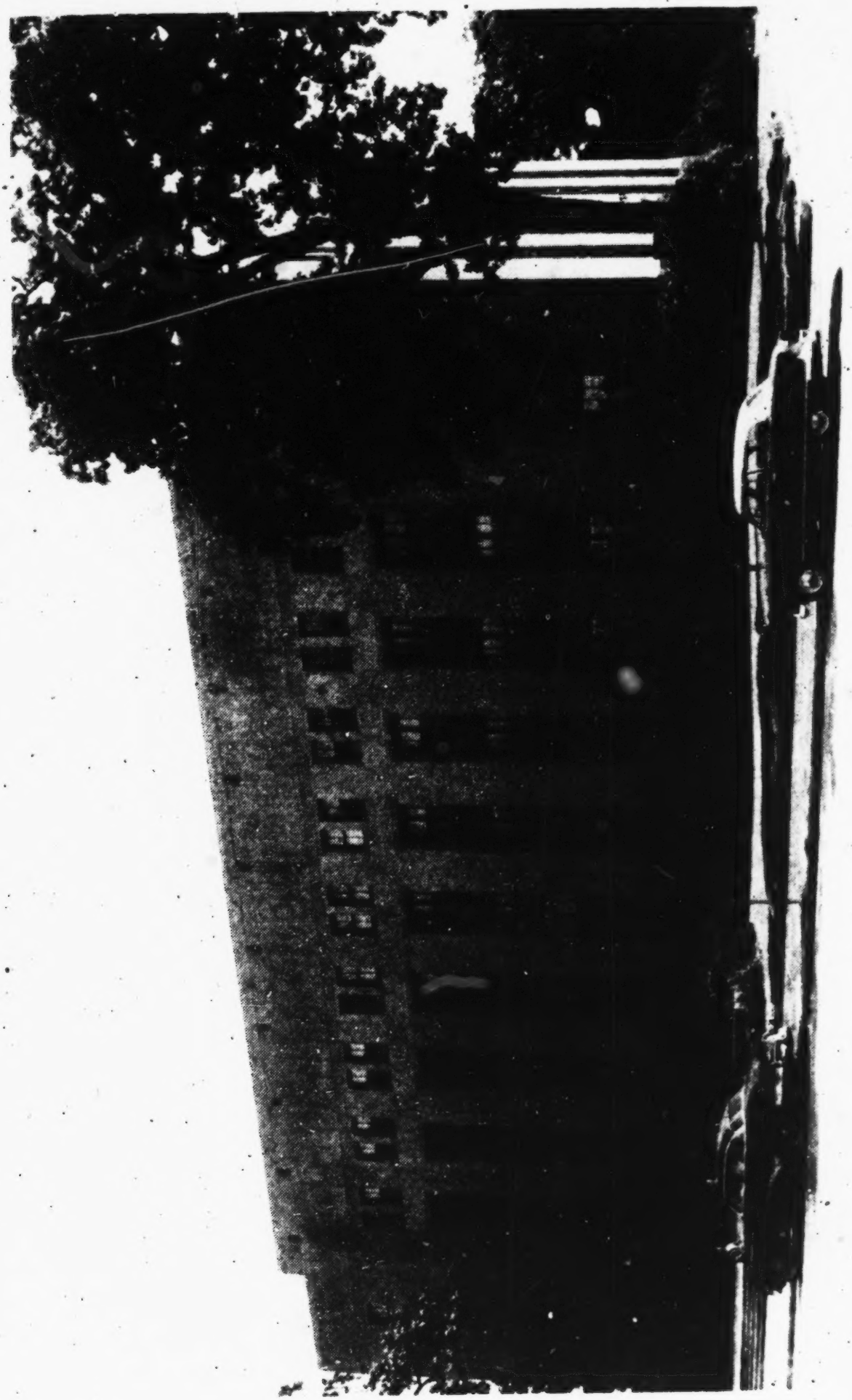

Appendix 1